

**ORAL ARGUMENT NOT YET SCHEDULED**

**UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

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**No. 21-3032**

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**UNITED STATES OF AMERICA,**  
*Plaintiff-Appellee,*

**v.**

**THEODORE B. DOUGLAS,**  
*Defendant-Appellant.*

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**APPEAL FROM THE UNITED STATES DISTRICT COURT FOR  
THE DISTRICT OF COLUMBIA**

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**APPENDIX FOR APPELLANT  
VOLUME II**

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District Court  
Cr. No. 20-121 (CJN)-2

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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, CR Action  
Plaintiff, No. 1:20-121  
vs. Washington, DC  
October 20, 2020  
TAVONTE WILLIAMS, 10:55 A.M.  
THEODORE B. DOUGLAS  
Defendants.

TRANSCRIPT OF MOTION HEARING  
BEFORE THE HONORABLE CARL J. NICHOLS  
UNITED STATES DISTRICT JUDGE

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1 P R O C E E D I N G S

2 CLERK: This is criminal case year 2020-121,  
3 United States of America versus Tavonte Williams, Defendant  
4 number 1, and Theodore B. Douglas, Defendant number 2.  
5 Counsel, please come forward and introduce yourselves  
6 beginning with the Government.

7 MR. WASSERMAN: Good morning, Your Honor. Steven  
8 Wasserman on behalf of the United States.

9 THE COURT: Mr. Wasserman, good morning.

10 MR. WASSERMAN: Good morning.

11 MR. OHM: On behalf -- I wanted to thank Your  
12 Honor and court staff and marshals for accommodating us this  
13 morning on behalf of Mr. Douglas.

14 THE COURT: Thank you.

15 MR. MARSTON: John Marston for Mr. Williams who is  
16 present.

17 THE COURT: Mr. Marston, thank you.

18 Obviously, these are strange times. We are in the  
19 ceremonial courtroom to spread out as much as possible,  
20 consistent with the Court's standing orders around COVID.  
21 We are going to do our very best to remain masked and to,  
22 generally, follow the standing order.

23 I think just in terms of that question, I would  
24 like, to the maximum extent possible, for everyone speaking  
25 to remain masked, except the witness or witnesses who I will

1 permit to wear either no mask or a face guard, if we have  
2 them in the courtroom, and I think we do.

3 So I'd like, again, this is all strange times, but  
4 I think we'll be fine with masks, except for the witnesses.

5 Other than that, I would like to try to conduct  
6 this hearing just like if we were in my courtroom without  
7 masks, eight months ago.

8 I realize that we have pending four different  
9 motions, some defense motions, some Government motions.  
10 Some of them obviously implicate evidentiary questions and  
11 testimony, some don't.

12 I probably have a view about how I would like to  
13 proceed, but I didn't know if the parties had discussed an  
14 order of operations or a proposal for how we would begin. I  
15 am happy to hear from you, Mr. Wasserman, if you either  
16 discussed that question with defense counsel or have a  
17 proposal.

18 MR. WASSERMAN: I haven't discussed it with  
19 defense counsel. I guess I assumed that we would proceed  
20 with the evidentiary motions because, obviously, if the  
21 evidence were somehow suppressed, it would moot out at least  
22 for now, the other two motions, Government's motion and I  
23 believe the motion to sever; so that would be my  
24 recommendation. I don't know, you know, what defense  
25 counsel's position is. I also want to apprise the Court and

1 the marshals, I have the evidence here in the courtroom,  
2 which also consists of the firearm and the ammunition, which  
3 are in separate packaging and the firearm has been cleared  
4 by the marshals downstairs. I just wanted to mention that.

5 THE COURT: Thank you. I will say the following,  
6 I tend to think we should just do the evidentiary issues  
7 first. I am very likely to take even evidentiary motions  
8 under advisement and write something on them and on the  
9 other motions. So I don't think the question of the  
10 evidentiary motion mooting out the other motions is  
11 relevant, but I think it makes sense to do them first in any  
12 event. I didn't want to necessarily decide that until I  
13 heard from defense counsel.

14 MR. WASSERMAN: I am still fine with that.

15 THE COURT: Mr. Ohm?

16 MR. OHM: That makes sense to me, Your Honor.

17 THE COURT: Mr. Marston?

18 MR. MARSTON: I agree.

19 THE COURT: Okay. Why don't we start there.

20 Do you want to begin with argument or witnesses,  
21 Mr. Wasserman?

22 MR. WASSERMAN: Your Honor, I would just begin  
23 with witnesses.

24 THE COURT: Okay. Let's do that.

25 MR. WASSERMAN: The Government would call Officer

1 Isaac Jackson.

2 Your Honor, ordinarily we would have the touch  
3 screen. To the extent that I anticipate having Officer  
4 Jackson mark some exhibits, I am going to have to approach  
5 him and have him probably just do it the old-fashioned way.

6 THE COURT: That's fine. We will figure it out.

7 MR. WASSERMAN: Okay. Thank you.

8 THE COURT: Not a problem.

9 CLERK: Please raise your right hand. Do you  
10 solemnly swear to tell the truth, the whole truth and  
11 nothing but the truth, so help you God?

12 THE WITNESS: I do.

13 MR. WASSERMAN: Your Honor, I don't know if you  
14 want to address him with respect to the mask and face cover  
15 and shield?

16 THE COURT: Officer Jackson, you are free to go  
17 forward with the mask. Since you are the witness, you are  
18 the one person who could, if you would prefer, put on a face  
19 shield and remove the mask. I am happy for you to proceed  
20 either way. I suppose one question is whether the defense  
21 counsel has a strong preference for his wearing the face  
22 shield for credibility issues?

23 MR. OHM: No preference, Your Honor. Whatever  
24 suits the witness is fine.

25 MR. MARSTON: Same for me, Your Honor.



1 THE COURT: Officer Jackson, if you would like to  
2 put on a face shield and take off the mask, that's not a  
3 requirement.

4 THE WITNESS: I am fine with this.

5 MR. OHM: Before the Government begins, Your  
6 Honor, I forgot to tell Mr. Douglas if he wants to  
7 communicate with me, that he should raise his hand. We have  
8 the phone and can have a conversation.

9 THE COURT: Yes. We have -- everyone should know  
10 we have what I think has to be a relatively elaborate setup  
11 for clients and counsel to communicate as well as for me to  
12 be able to communicate with counsel in what would be  
13 something like a bench conference but a virtual one.

14 I think if anyone feels the need to communicate  
15 with someone who he or she is not sitting next to, that's  
16 basically everyone, go ahead, especially if it's a  
17 defendant. Please raise your hand. We will pause. We will  
18 make sure you can communicate, and then we will just resume.

19 MR. WASSERMAN: Thank you, Your Honor.

20 **DIRECT EXAMINATION**

21 **BY MR. WASSERMAN:**

22 Q. Good morning.

23 A. Good morning.

24 Q. Can you introduce yourself to the Court and spell  
25 your first and last name for the court reporter.

1           **A.**   Officer Isaac Jackson. First name Isaac,  
2           I-s-a-a-c. Last name Jackson, J-a-c-k-s-o-n.

3           **Q.**   Where are you currently employed?

4           **A.**   Metropolitan Police Department in Washington, D.C.

5           **Q.**   How long have you been employed with MPD?

6           **A.**   Approximately 20 years.

7           **Q.**   And what is your position with MPD?

8           **A.**   I am an officer.

9           **Q.**   And what is your current assignment with MPD?

10          **A.**   I am currently assigned to the narcotics  
11          enforcement unit, which is out of NSID, Narcotics Special  
12          Investigation.

13          **Q.**   How long have you been with NSID or the narcotics  
14          enforcement unit?

15          **A.**   On and off 10 years.

16          **Q.**   And prior to being assigned to NSID, what other  
17          assignments have you had?

18          **A.**   I was assigned to sixth district vice unit and  
19          then that turned into sixth district team and that's pretty  
20          much it.

21                THE COURT: I am seeing that the court reporter  
22          she is having trouble hearing.

23                Officer Jackson, I think one of the reasons she is  
24          having a hard time is because of your mask. Would you mind  
25          putting on a face shield?

1 THE WITNESS: Not at all.

2 (Witness was assisted by the Deputy Clerk.)

3 THE COURT: You can go ahead.

4 MR. WASSERMAN: Okay. Your mask is off? Okay.

5 THE COURT: Thank you, Ms. Lesley. Thank you,  
6 Officer Jackson.

7 THE WITNESS: You're welcome.

8 BY MR. WASSERMAN:

9 Q. I was asking you, prior to your assignment with  
10 NSID, what other assignments have you had with MPD?

11 A. Sixth district vice and served some time in sixth  
12 district patrol.

13 Q. And your positions when you were in six D, what  
14 types of cases or investigations did you work?

15 A. Primarily narcotics investigations, other  
16 investigations and some prostitutions as well.

17 Q. What types of investigations do you work on  
18 currently with NSID?

19 A. Narcotics investigations.

20 Q. And as part of your assignment for your experience  
21 as an MPD officer, have you received any training in  
22 connection with narcotics investigations and firearms  
23 investigations?

24 A. Yes, sir. I served some time on-the-job training  
25 as well as some training in DEA, which is based out of

1 Quantico at the time. We did some training there. Also,  
2 some training at the police academy as well.

3 Q. And, as part of your current assignment at NSID,  
4 is there yearly training that's provided?

5 A. Yes. We have a training course, which is called  
6 EDT, and we train at least twice a year, and we familiarize  
7 ourselves with narcotics investigations as well as firearms.

8 Q. All right. Can you describe for the Court what an  
9 observation post is?

10 A. Sure. An observation post can be -- I could be  
11 out walking, in a vehicle or also in a building. There are  
12 observations made by undercover officers, undercover  
13 officers would be looking to observe for any type of illegal  
14 activity and, like I said before, probably be in the  
15 building, on foot or sometimes in the vehicle.

16 Q. Okay.

17 MR. WASSERMAN: I'm sorry. Is he coming over the  
18 speaker? I am not hearing him too well. Is the mic working  
19 that well?

20 THE COURT: I agree. I can hear him but I don't  
21 think he is being transmitted on the speaker.

22 (The witness was provided a microphone.)

23 BY MR. WASSERMAN:

24 Q. Okay. All right. You indicated that observation  
25 post can be either on foot or in a vehicle; is that what you

1 said?

2 A. Yes, sir.

3 Q. And have you actually personally worked  
4 observation post, as an observation post officer?

5 A. Yes, sir.

6 Q. And what, generally, are you looking for in terms  
7 of criminal activity as an OP officer?

8 A. We go to areas and we will look for hand-to-hand  
9 interactions. People engaging in -- usually start with  
10 individuals engaging in conversation and after that  
11 conversation person would probably go to a stash, which is  
12 somewhat near them, which could be on their person. Also, I  
13 would look for hand movements between those two people.  
14 After that I would give a look out.

15 Q. So for the OP it is typically narcotics then that  
16 you are looking for?

17 A. Yes, sir.

18 Q. All right. And how about firearms?

19 A. Firearms as well. I would look for any type of  
20 movements or indication or characteristics of anybody that  
21 could possibly be armed with a firearm; arm or hand  
22 gestures, movements upon their waistband or on their person,  
23 and things like that.

24 Q. And how many times do you think you worked an OP  
25 case as an OP officer?

1           **A.**    I can say more than 500.

2           **Q.**    Okay. That is over the course of your 20-year  
3 career?

4           **A.**    Yes, sir.

5           **Q.**    All right. When you are working in OP, do you  
6 sometimes use any tools to enhance your vision?

7           **A.**    Yes, sir.

8           **Q.**    All right. And what types of tools might you use?

9           **A.**    If available, I can use a set of binoculars.

10          **Q.**    Do you always use these?

11          **A.**    No.

12          **Q.**    Are there situations where -- well, let me --  
13 describe what situations you might not use binoculars to  
14 enhance your vision?

15          **A.**    Like I said before, usually on observation post if  
16 I am out on foot or if I am in the vehicle and I am in the  
17 presence of other individuals or nearby, I would try to  
18 blend in by being in an undercover capacity. I cannot pull  
19 out a set of binoculars without bringing attention to  
20 myself.

21          **Q.**    What is the arrest team?

22          **A.**    The arrest team is nearby police officers; they  
23 will be wearing police insignia in unmarked vehicles and  
24 they are constantly transmitting on radio lookouts and  
25 monitoring those lookouts and monitoring my transmissions so

1 that they can move into the area if I give a lookout. But  
2 they do wear police insignia.

3 Q. When you use the term "lookout", is that a  
4 reference to someone you've identified as being someone  
5 suspected to participate in a criminal transaction or  
6 criminal activity?

7 A. Yes, sir.

8 Q. Okay. And lookout, what is that?

9 A. A lookout can be a description. A description of  
10 an individual who I saw engage in what appeared to be  
11 illegal activity. It could be clothing description, race,  
12 age approximately sometimes, what the person is wearing or  
13 anything that sticks out and things like that.

14 Q. All right. When someone is stopped by officers of  
15 the arrest team as a result of your observations, is there  
16 typically an identification procedure that you use to  
17 determine whether the officers have stopped the correct  
18 person?

19 A. Yes.

20 Q. Can you just describe how that ID procedure is  
21 typically conducted in your experience?

22 A. Sure. The officers will have an individual stop  
23 that is matching the lookout that I have given previously.  
24 If I can, at the time, I would come across the radio and say  
25 positive ID; that's the person I need to be stopped, and

1       there appears to be illegal activity.

2           **Q.**   All right. And when you are operating an OP, how  
3       important is it for you to provide an accurate description  
4       to the arrest team of what and whom you are observing?

5           **A.**   It is very important so that the right person is  
6       stopped, and I don't want anybody who is not involved in my  
7       observations to be stopped.

8           **Q.**   Okay. When you voice an initial lookout for the  
9       arrest team, are you typically concerned about trying to be  
10      sure that the arrest team is trying to stop the person or  
11      persons before they leave the area?

12          **A.**   Yes.

13          **Q.**   Are there times when you will provide additional  
14      descriptive detail after you first broadcast a lookout for  
15      somebody?

16          **A.**   Yes.

17          **Q.**   All right. Based upon your training and  
18      experience, are you familiar with some of the signs or  
19      behaviors exhibited by a person engaged or people engaged in  
20      sort of a typical hand-to-hand transaction for drugs?

21          **A.**   Yes.

22          **Q.**   Can you kind of just describe some of those  
23      characteristics or behaviors?

24          **A.**   Um, in most times, um, people are trying to be --  
25      well, people I am observing are in a discreet type of



1 nature. They are trying to be secretive and they are  
2 reaching upon their person. Sometimes I will look for the  
3 exchange of currency, money. Also, I will look to see if a  
4 person is reaching on their person or possibly going to a  
5 stash location, where they could get their narcotics or  
6 drugs from and subsequently go back to that person and give  
7 that item to them. It is just hand movement, secretive and  
8 things like that.

9 Q. When you use the term "secretive" in terms of the  
10 behaviors of the individuals that you may observe engaging  
11 in hand-to-hand, what, if any, behaviors do you typically  
12 see them exhibit beyond the sort of reaching on their person  
13 and the actual exchange?

14 A. Looking around. I do recognize that people engage  
15 in a hand-to-hand transaction will not hold out the drugs so  
16 that everybody can see it. Just trying to be discreet,  
17 looking around, holding upon their person in a manner that  
18 is not, um -- so that somebody cannot see right away.

19 Q. All right. And with respect to firearms, you  
20 eluded to this a little bit earlier, but in terms of  
21 observing somebody who may be in possession of a firearm on  
22 their person, what are the types of behaviors that you  
23 typically look for?

24 MR. OHM: Objection, Your Honor, foundation. He  
25 has only testified to his training and experience in

1       narcotics.

2               THE COURT: Can you repeat the question?

3               MR. WASSERMAN: With respect to your observations  
4 of individuals that you suspect are in possession of  
5 firearms, what are the types of behaviors and  
6 characteristics that you typically look for?

7               THE COURT: I'll allow the question.

8               THE WITNESS: Hand/arm movement, person trying to  
9 conceal something up against their waistband and sometimes  
10 even in their pockets. For instance, I carry a firearm on  
11 and off duty and I carry it upon my waistband. Sometimes I  
12 would hold it up against my waistband while using my arm,  
13 just to try to conceal it and things like that. Someone  
14 trying to conceal their waistband area with their arms and  
15 hand movement and things like that.

16              **Q.** In your training and experience, how common is it  
17 for individuals engaged in drug trafficking to possess  
18 firearms?

19              **A.** It is very common.

20              **Q.** In your experience as PO officer, when there is an  
21 arrest or seizure, what types of contraband are commonly  
22 involved?

23              **A.** U.S. currency, other narcotics, empty Ziplocs,  
24 plastics and firearms as well.

25              **Q.** Are you familiar with the size, shape, weight and

1 other characteristics of your typical handgun?

2 A. Yes.

3 Q. Is that through your training and experience as a  
4 police officer?

5 A. Yes, sir.

6 Q. In your experience, have you had cases as an OP or  
7 heard of cases where transactions or transfers of bulk  
8 quantities of narcotics or of a firearm occur in the type of  
9 hand-to-hand transaction that you earlier described?

10 A. Yes, I've had instances like that.

11 Q. In those instances, are they -- where we are  
12 talking about bulk transfers of narcotics or firearms, have  
13 you heard of cases where this is done out in the open where  
14 people are actually handing them to each other or --

15 A. No. Are you finished with the question?

16 Q. No. How, in your experience, are those types of  
17 transactions or exchanges conducted?

18 A. Usually in a vehicle if large quantities or  
19 firearms usually in a bag or I have been a part of instances  
20 where those transactions took place in the vehicle, the  
21 building, like, sometimes in a free area outside in a  
22 particular area; that's pretty much it.

23 Q. All right. Would you expect then somebody to out  
24 in the open, in the street, hand somebody a kilo of coke or  
25 a handgun out in the open?

1           **A.**    No.

2           **Q.**    All right. Prior to April of 2020 this year, how  
3 frequently have you worked as a police officer in the fifth  
4 police district?

5           **A.**    Quite frequently.

6           **Q.**    In your 20 years of experience as a police officer  
7 with MPD, what types of crimes occur most frequently in the  
8 fifth district?

9                   MR. OHM: Object to the question. Experience from  
10 2000 to 2015 is broad.

11                   THE COURT: Why don't we narrow it a little bit  
12 chronologically.

13 **BY MR. WASSERMAN:**

14           **Q.**    Going back to, say, 2015 to the present, what  
15 types of crimes, in your experience, in the fifth district,  
16 most frequently occur?

17           **A.**    We've had violent crimes, shootings take place  
18 narcotics transactions and things like that.

19           **Q.**    All right.

20           **A.**    Are you asking the nature of the crime?

21           **Q.**    Yes, the nature of the crime?

22           **A.**    Violent crimes, people who have been victims of  
23 gunshots, things like that, robberies, and things like that.

24           **Q.**    And you indicated -- is there drug trafficking as  
25 well?

1           **A.**    Yes.   And drug transactions as well, yes.

2           **Q.**    In your experience between, say, 2015 and 2020,  
3   how does the frequency of the drug and violent crimes in 5D  
4   compare to similar offenses in terms of frequency in the  
5   first, second, third and fourth police stations?

6           **A.**    In my experience and my time in the area, it is  
7   more frequent than those districts.   First district, second  
8   district, third district and fourth district, the fifth  
9   district would be more frequent than those districts.

10          **Q.**    How about with respect to sixth and seventh?

11          **A.**    It wouldn't be, in my experience, as frequent but  
12   it's somewhat almost similar.

13          **Q.**    All right.   I want to direct your attention to  
14   shortly before 3:00 p.m. on April 22nd of 2020 this year.  
15   Were you on duty that day?

16          **A.**    Yes.

17          **Q.**    What was your assignment that day?

18          **A.**    I was operating an undercover capacity, utilizing  
19   an unmarked vehicle on an observation post.

20          **Q.**    What street or block was your OP, your observation  
21   post, located?

22          **A.**    2300 block of 15th Street Northeast.

23          **Q.**    You indicated you were in an unmarked vehicle?

24          **A.**    Yes, sir.

25          **Q.**    And was anyone with you in the vehicle?

1           **A.**    No.

2           **Q.**    Can you generally describe what's located in that  
3 block, the 2300 block of 15th Street Northeast?

4           **A.**    The 23rd block of 15th Street, if you are going  
5 southbound on 15th Street, there is a set of row houses on  
6 your left. Then on the right-hand side, there is a  
7 recreational center, a playground and that's pretty much it.

8           **Q.**    Are you familiar with this area?

9           **A.**    Yes.

10          **Q.**    How are you familiar with that area?

11          **A.**    Just based on past instances conducting  
12 investigations, operations and just basic patrolling in that  
13 area.

14          **Q.**    How often have you worked as a police officer in  
15 this particular area?

16          **A.**    Quite often. Since my time at NSID, it was quite  
17 frequent. I would say more than -- I would say about five  
18 years on and off.

19          **Q.**    Five years?

20          **A.**    Yeah, five years.

21          **Q.**    And in terms of frequency, can you estimate the  
22 number of times you sort of patrolled or have been involved  
23 in investigations in that area?

24          **A.**    I can say close to 200.

25                   (Government's Exhibit 1-A was marked for

1 identification.)

2 MR. WASSERMAN: I want to show you what I have  
3 marked for identification as Government's Exhibit 1-A.  
4 Officer Jackson, do you recognize what is on the screen  
5 marked as Government's Exhibit 1-A?

6 THE WITNESS: Yes.

7 Real quick. I would much rather take the mask  
8 (sic) off. It's fogging up and affecting my ability to see  
9 and since I have the microphone I can use -- would that be  
10 better?

11 THE COURT: Why don't we try that. Why don't you  
12 put the mask back on and take the shield off, use the  
13 microphone. We will confirm with the court reporter that  
14 that's --

15 THE WITNESS: That's much better as far as my  
16 vision is concerned.

17 BY MR. WASSERMAN:

18 Q. Do you recognize the area depicted in 1-A?

19 A. Yes, sir.

20 Q. What is that area?

21 A. This is the 2300 block of 15th Street Northeast.

22 Q. And is this the area where you were conducting  
23 your OP on April 22nd of this year?

24 A. Yes, sir.

25 Q. Is that a fair and accurate depiction of the

1 general appearance of that area on that date?

2 **A.** Yes, sir.

3 MR. WASSERMAN: Your Honor, I would move for  
4 Government's Exhibit 1-A into evidence.

5 MR. MARSTON: No objection.

6 MR. OHM: No objection.

7 THE COURT: So admitted.

8 (Government's Exhibit 1-A was admitted.)

9 (Government's Exhibit 1-B was marked for  
10 identification.)

11 **BY MR. WASSERMAN:**

12 **Q.** Showing you Government's Exhibit 1-B for  
13 identification. Do you recognize that photograph?

14 **A.** Yes, sir.

15 **Q.** And what is that -- what is depicted in that area?

16 **A.** This is the same 2300 block of 15th Street  
17 Northeast, but it is the back side of the row houses that I  
18 previously mentioned, along with the walkway that leads to a  
19 back parking lot.

20 **Q.** And is the area depicted in 1-B a fair and  
21 accurate depiction of that area as it appeared on April 22nd  
22 of this year?

23 **A.** Yes, sir.

24 MR. WASSERMAN: Your Honor, I move Government's  
25 Exhibit 1-B into evidence.



1 MR. MARSTON: No objection.

2 MR. OHM: No objection, Your Honor.

3 THE COURT: We will admit 1-B as well.

4 (Government's Exhibit 1-B was admitted.)

5 **BY MR. WASSERMAN:**

6 Q. Officer Jackson, in your training and experience  
7 do you know if this particular block is known as a high  
8 crime area?

9 A. In my training and experience, yes, it is known as  
10 a high crime area.

11 Q. What types of criminal activities are most common  
12 in this block, this area that is depicted in 1-A and 1-B?

13 A. Narcotic sales.

14 Q. Anything else?

15 A. Narcotic sales and there has been some violent  
16 crimes that took place in this particular area.

17 Q. Okay. With respect to the vehicle that you were  
18 stationed in, what type of vehicle was it? Was it a sedan  
19 or SUV?

20 A. It was a sedan type of vehicle.

21 Q. And were the windows tinted?

22 A. No.

23 Q. Where inside of the vehicle were you seated while  
24 you were making your observations?

25 A. In the driver's seat.

1 Q. Were you using binoculars or any other tools to  
2 enhance your vision?

3 A. No, sir.

4 Q. On April 22nd of 2020, did you have a prescription  
5 for eyeglasses or contacts?

6 A. No.

7 Q. Do you recall having any problems with your vision  
8 that day?

9 A. No.

10 (Government's Exhibit No. 2 was marked for  
11 identification.)

12 **BY MR. WASSERMAN:**

13 Q. Okay. I want to show you Government's Exhibit No.  
14 2, if we can bring that up on the screen. Do you recognize  
15 that photograph?

16 A. Yes, sir.

17 Q. And looking at that photograph, Exhibit No. 2, are  
18 you able to actually see the vehicle that you were in on  
19 April 22nd?

20 A. Yes, sir.

21 Q. All right. What I am going to do is, I am going  
22 to -- I actually have to bring you a hard copy of this  
23 photograph, and I am going to ask you to circle where your  
24 vehicle is.

25 A. Sure.

1 MR. WASSERMAN: Your Honor, may I approach?

2 THE COURT: Please.

3 THE WITNESS: Circle it now?

4 **BY MR. WASSERMAN:**

5 Q. Yeah. All right.

6 Officer Jackson, do you see the green circle where  
7 my finger is?

8 A. Yes, sir.

9 Q. And that vehicle that you circled, was that your  
10 OP vehicle on April 22nd?

11 A. Yes, sir.

12 Q. And that photograph, is that a fair and accurate  
13 depiction of the scene in the area, the 2300 block of 15th  
14 Street, as it appeared to you on that date?

15 A. Yes, sir.

16 MR. WASSERMAN: Your Honor, I would move  
17 Government's Exhibit No. 2 into evidence.

18 MR. MARSTON: No objection.

19 MR. OHM: No objection, Your Honor.

20 THE COURT: Admitted with the circle?

21 MR. WASSERMAN: Yes, thank you. I appreciate  
22 that.

23 (Government's Exhibit No. 2 was admitted.)

24 **BY MR. WASSERMAN:**

25 Q. And that particular exhibit, number 2, is that

1 actually from one of the officer's body worn cameras?

2 A. Yes, sir.

3 Q. And the area that the officer whose body worn  
4 camera we are seeing here, what is that particular area?

5 A. This is the walkway where I was making  
6 observations and saw a hand-to-hand exchange.

7 Q. Where are you parked?

8 A. On 15th Street, the 2300 block, facing southbound.

9 Q. Okay. And just so we are clear, with respect to  
10 this particular photograph from the body worn camera, was  
11 that a photograph or a still shot that was recorded after  
12 you made your observations in this case?

13 A. Yes, sir.

14 Q. And where you circled your vehicle with the green  
15 circle there, is that the location where your vehicle was  
16 when you made the observations that led to the arrests in  
17 this case?

18 A. Yes, sir.

19 Q. I want to show you Exhibit No. 1. If I can put  
20 that -- oops. Hang on a second. On Exhibit 1-A, do you see  
21 the walkway that you just were referring to?

22 A. Yes, sir.

23 Q. And can you see on 1-A the approximate location of  
24 where your vehicle was stationed on April 22nd?

25 A. Yes, sir.

1           **Q.** All right. I am going to ask you to go ahead and  
2 circle -- and just so we are clear, was this photograph one  
3 that was taken on the day you did the OP?

4           **A.** Was this?

5           **Q.** Yes.

6           **A.** No.

7           **Q.** All right. So in terms of the vehicles that are  
8 parked on that street, you don't know whether they were  
9 there on the day of the 22nd?

10          **A.** No. No.

11          **Q.** Okay. I will ask you to circle the approximate  
12 location of where your vehicle was stationed on 1-A, if you  
13 can.

14          **A.** It would be around in this area. (Indicated)

15          **Q.** So you've -- looking at 1-A you marked with a  
16 green circle on Exhibit 1-A. Is there a speed bump sort of  
17 near the green circle?

18          **A.** Yes, sir, and sort of, like, the upper left corner  
19 there is a speed bump.

20          **Q.** All right. And your vehicle was parked in front  
21 of that speed bump?

22          **A.** Yes. Yes.

23          **Q.** Was there a particular area that you were focused  
24 on that afternoon?

25          **A.** That afternoon I was looking at two different

1 locations. I was originally looking at a group on the right  
2 side, which would be -- do you want me to further explain it  
3 on this picture?

4 Q. If you say right side, is the rec center where my  
5 finger is?

6 A. Yes, sir.

7 Q. You were looking over there at times?

8 A. Yes, sir.

9 Q. And what was the other area you were focused on?

10 A. And towards the left side, which would be the  
11 walkway.

12 Q. All right. And is this what you are referring to,  
13 where my finger is?

14 A. Yes, sir.

15 Q. And for the record, it's the sort of long paved  
16 pathway between the two buildings on one end; is that right?

17 A. Yes, sir.

18 Q. Looking at -- well, let me ask you this: Did  
19 there come a point when you noticed some activity that  
20 raised your suspicions?

21 A. Yes.

22 Q. Where was that generally, that activity located?

23 A. In the walkway.

24 Q. All right. I am going to show you -- go back to  
25 Exhibit No. 2, Government's Exhibit No. 2, the photograph or

1 the location of the officer's body worn camera, how does  
2 that compare with the location of where you observed this  
3 activity?

4 **A.** This is where my observation post was which was in  
5 the vehicle and I am looking up across, across the street  
6 into that walkway; is that what you were asking?

7 **Q.** Yeah. In terms of where the officer is positioned  
8 with the body worn camera, how does that compare with where  
9 the activity you observed actually happened?

10 **A.** That is my line of sight, from where I can see.

11 **Q.** And in terms of that particular location, that  
12 walkway, have you had prior experiences in other cases of  
13 criminal activity occurring in that walkway?

14 **A.** Yes.

15 **Q.** What types of criminal activity?

16 **A.** Drugs, drug transactions.

17 **Q.** Okay. Was there a point between -- excuse me. Is  
18 there a point shortly before 3:00 p.m. that you observed  
19 something that caught your attention in that walkway?

20 **A.** Yes, sir.

21 **Q.** Can you just describe what you saw?

22 **A.** Sure. I saw an individual along with maybe, I  
23 would say, one to two other individuals standing in the  
24 walkway. I didn't think anything of it until another  
25 individual appeared in my line of sight and handed a book

1 bag over to one of the individuals in that walkway.

2 Q. And after the hand off of the book bag occurred,  
3 what, if anything, did you observe the individual who  
4 received the book bag do?

5 A. After that, he took off his jacket, placed the  
6 book bag on his person, actually put the straps on his  
7 shoulders, and then put the jacket over top of the book bag.

8 Q. Was there anything about that conduct that struck  
9 you as being unusual?

10 A. Yes.

11 Q. What?

12 A. It appeared that this individual was trying to  
13 conceal whatever was in that book bag, trying to hide the  
14 book bag on his person by covering it up with his jacket.

15 Q. And with respect to -- I may have missed this --  
16 did the individual -- was there any exchange between the  
17 individual who received the backpack to the individual who  
18 handed it over?

19 A. Yes. It appeared that the individual who received  
20 the backpack gave that individual, the one who gave him the  
21 book bag, it appeared he could have given him some sort of  
22 U.S. currency, some money. After that action, it was  
23 followed up by some sort of handshake.

24 Q. All right. What led you to believe, based on your  
25 observations, the handoff from the individual who received



1 the backpack to the individual that gave it to him, that it  
2 was U.S. currency?

3 A. It was just color and nature. It just happened so  
4 fast. When I looked at his hand, I could see that after  
5 receiving the money, it was just light in color and then he  
6 cuffed his hand and that was it. That's pretty much all I  
7 can remember.

8 Q. Could you be certain that it was U.S. currency?

9 A. I can't be certain.

10 Q. When this exchange was occurring -- and just so we  
11 are clear and sort of have a little bit of a reference  
12 point, do you recall generally what the person who received  
13 the backpack was wearing?

14 A. Yes, sir.

15 Q. What was that individual wearing?

16 A. It was like a bluish jacket, blue coat. I believe  
17 dark-colored pants. I don't remember the color of the  
18 shirt. When he took the coat off, I don't remember the  
19 color of the shirt.

20 Q. What angle did you have of the male in the blue  
21 coat when this exchange was occurring?

22 A. I could see his back.

23 Q. I'm sorry?

24 A. I could see his back. Do you mean which part of  
25 his body can I see?

1 Q. Yeah.

2 A. When I see him taking off his jacket -- I couldn't  
3 see one side. I could just see him taking off the coat and  
4 putting the book bag on his person and covering it up with  
5 the coat.

6 Q. And the other individual, can you describe what  
7 the other individual looked like who handed off the  
8 backpack?

9 A. Sure. I remember it was like a bushy-ish sort of  
10 hair, and he had a grayish or patterned jacket or coat, and  
11 that is the best I can remember, and an orange hood.

12 Q. All right. What angle did you have of that  
13 individual?

14 A. Just --

15 Q. From your view.

16 A. From my view, I can see the left side of this  
17 individual.

18 Q. His left side?

19 A. Yes, sir.

20 Q. And in terms of the exchange that occurred when  
21 you saw what you believed might have been U.S. currency, can  
22 you describe what angle you had of both men?

23 A. I just had the right side of the individual  
24 wearing the blue coat, and I had the left side of the  
25 individual wearing the grayish jacket with the orangish

1 hood. I could originally see the right hand. I could see  
2 orange hood's right hand.

3 Q. The guy giving the backpack?

4 A. Yes.

5 Q. His right hand?

6 A. Yes.

7 Q. What hand did you observe the individual in the  
8 blue coat who received the backpack handoff?

9 A. The back side of his right arm. The back side of  
10 his right hand.

11 Q. The back side of his right hand?

12 A. Yes. Are you talking about the one with the blue  
13 coat?

14 Q. The one with the blue coat.

15 A. Yeah. When he made a gesture I could see his  
16 right arm extended.

17 Q. Okay. So just so I am clear, which -- looking at  
18 Exhibit 2 where my finger -- well, which side of the fence  
19 is the individual with the blue coat that received the  
20 backpack standing?

21 A. Do you want me to point?

22 Q. Well, you are not going -- was it between --

23 A. Between your two fingers right there.

24 Q. This finger or that finger?

25 A. The, um --

1 Q. Was it the side of the fence closer to you or --

2 THE COURT: Can we start with inside of the fence  
3 on the walkway? Were they inside of the fence on the  
4 walkway?

5 THE WITNESS: Yes, the individual with the blue  
6 coat was on the walkway. When I originally saw the  
7 individual with the grayish coat and orange hood, I believe  
8 he was on the other side of the fence.

9 **BY MR. WASSERMAN:**

10 Q. Let me go ahead and bring up Exhibit 1-B. Looking  
11 at Exhibit 1-B, do you see from where -- well, where was it  
12 that you saw -- first saw the individual with the orange  
13 hood and the backpack coming?

14 A. Coming from the lower portion of this photograph,  
15 up into the walkway leading up, if you go further up. I  
16 couldn't see -- where your finger is, I couldn't see him  
17 coming from that -- I couldn't see him at that point. You  
18 have to keep going up.

19 Q. I'm sorry? When did you first notice him?

20 A. I would say mid-point into the center of this  
21 photograph where the walkway is.

22 THE COURT: Can we be a little clearer for the  
23 record what the witness is describing? I think the witness  
24 is describing the individual was walking from the bottom of  
25 the photograph toward the top of the photograph in that

1 direction. Correct?

2 THE WITNESS: Yes, Your Honor. Yes.

3 MR. WASSERMAN: Thank you, Your Honor.

4 THE COURT: I think the problem is with finger  
5 pointing, it will not appear on the record. Let's talk  
6 directionally about the photo.

7 MR. WASSERMAN: I appreciate that, Your Honor.

8 **BY MR. WASSERMAN:**

9 Q. And the individual that had the backpack, when you  
10 saw that individual, was he in the walkway or -- when you  
11 first saw him inside of the walkway between the fence or was  
12 he outside of the fence?

13 A. Which individual are you referring to?

14 Q. The individual who handed off the backpack.

15 A. I remember that individual being on the other side  
16 of the fence. Not in the walkway.

17 Q. Okay. And did the handoff occur while the  
18 individual with the orange hood was outside of the fence or  
19 in the walkway? Did he hop the fence?

20 A. I believe he did hop the fence at some point.

21 Q. Okay. So where did the actual exchange occur?

22 A. In the walkway. The individual with the blue  
23 coat, he was in the walkway.

24 Q. All right. So again, looking at Exhibit No. 2,  
25 you see your vehicle circled in green. Was the individual

1 in the blue jacket who received the backpack standing on the  
2 fence line closer to you or further away from where you were  
3 positioned?

4 **A.** Closer to me. I would say closer to me.

5 **Q.** Okay. And to back up, when you saw the exchange  
6 between the two individuals, of what you believe was  
7 currency, which side of the individual in the blue jacket  
8 were you able to see?

9 **A.** Just the back right side.

10 **Q.** Okay. And which hand, if you can recall, do you  
11 think the individual in the blue jacket extended to hand the  
12 object or potential currency?

13 **A.** If I can remember, I believe it was his right  
14 hand.

15 **Q.** His right hand?

16 **A.** Yes, sir.

17 **Q.** I am going to, actually, ask you to mark on  
18 Exhibit 1-B if you can, the approximate location of where  
19 you saw the exchange?

20 **A.** (Complied.)

21 **Q.** Looking at Exhibit 1-B, and you circled -- do you  
22 see the green circle there?

23 **A.** Yes, sir.

24 **Q.** And is that the approximate location where you  
25 observed the exchange occur?

1           **A.**    Yes, sir.

2           **Q.**    And just for the record, the green circle is  
3           towards the top of the walkway at the top of the photograph  
4           closer to 15th Street; is that accurate?

5           **A.**    Yes, sir.

6           **Q.**    Was there anything obstructing your line of sight  
7           when you observed the exchange?

8           **A.**    No, not at that moment.

9           **Q.**    Was there anything distracting your attention away  
10          from the exchange that you were observing at that time?

11          **A.**    No.

12          **Q.**    About how long do you think the interaction was  
13          between the two individuals, person in the blue coat and  
14          person in the orange hood, when they did this exchange?

15          **A.**    I would say close to 20 to 30 seconds. No more  
16          than a minute.

17          **Q.**    And at the time of this exchange, you indicated  
18          earlier that you initially noticed the individual in the  
19          blue jacket with one or two other males?

20          **A.**    Yes.

21          **Q.**    Were those other two males still standing in that  
22          area at the time of the exchange, if you can recall?

23          **A.**    If I can recall, I can maybe recall maybe one.

24          **Q.**    Did any of these -- this other individual that you  
25          mentioned appear to participate in any way in this exchange

1 that you observed?

2 **A.** No.

3 **Q.** Did you observe any exchange or interaction  
4 between either the individual in the blue coat or the  
5 individual in the orange hood with this third person?

6 **A.** Can you repeat that?

7 **Q.** Did you see any exchange or physical interaction  
8 between the individual in the blue coat or the individual in  
9 the orange hood with this third person?

10 **A.** Oh, no. No.

11 **Q.** Prior to observing the exchange of the backpack in  
12 the walkway, do you recall approximately how long the male  
13 in the blue coat had been standing in the walkway before the  
14 exchange occurred?

15 **A.** I would say maybe one to two minutes, but that was  
16 back and forth just in and out of my sight, just walking up  
17 and down the walkway.

18 **Q.** About how long had you been in that location in  
19 your OP vehicle before you observed the exchange?

20 **A.** The best of my recollection, about 10 to 15  
21 minutes.

22 **Q.** When you observed the exchange that you just  
23 described, what if anything did you suspect had occurred?

24 **A.** I suspected that some sort of -- some transaction  
25 had taken place, illegal transaction. I suspected it could



1 have been either a large quantity of narcotics or possibly a  
2 firearm.

3 Q. And what, based upon your observations, what  
4 caused you to believe that?

5 A. Well, the way that the individual, after receiving  
6 the bag, tried to conceal the book bag, he took off his  
7 jacket, put the book bag on and covered the book bag with  
8 his jacket so that it could not be seen, and also the hand  
9 gestures, what appeared to be the exchange of U.S. currency.  
10 I recognized this to be some sort of transaction.

11 Q. After you observed the exchange of the backpack  
12 for the money, what, if anything, did you observe the  
13 individual in the blue coat do?

14 A. After taking off -- he took off his jacket.

15 Q. After he put his jacket back over the backpack.

16 A. Oh, okay. He stood there for some time. Then  
17 shortly after, walked out of my sight.

18 Q. And what about the individual, who handed him the  
19 backpack, in the orange hood? What did that individual do?

20 A. He had walked out of my sight as well.

21 Q. And do you remember about how long they remained  
22 in your sight after the initial exchange?

23 A. I would say no more than a minute. I would say  
24 maybe 30 to 45 seconds.

25 Q. Okay. And looking at Exhibit 1-B, which direction

1 did they walk when they, you know, eventually were out of  
2 your sight?

3 **A.** They walked further down the middle portion of the  
4 exhibit displayed. They walked further in the walkway out  
5 of my sight towards the parking lot. They would be walking  
6 further down to the bottom portion of this exhibit.

7 **Q.** Okay. Is there a parking lot in Exhibit 1-B near  
8 the row houses; is that what you are referring to?

9 **A.** Yes, sir.

10 **Q.** What did you do?

11 **A.** I broadcast the lookout and advised the arrest  
12 team I needed to move in and stop the individuals involved.

13 **Q.** At the time that you broadcast the lookout, did  
14 you remain in the same location that you made those  
15 observations?

16 **A.** Yes, I did.

17 **Q.** At the time that you first broadcast the lookout  
18 over the radio, was there anything obstructing your view of  
19 the two males that you described do the exchange?

20 **A.** No.

21 **Q.** Prior to this hearing, have you had an opportunity  
22 to listen to the radio communications you had that day after  
23 seeing the exchange?

24 **A.** Yes.

25 **Q.** All right. I am going to play you a portion of

1 Government's Exhibit No. 3 starting at, I guess, the six  
2 minute mark.

3 (Played audio.)

4 Officer Jackson, do you recognize the voice on  
5 that recording?

6 **A.** Yes.

7 **Q.** Whose voice is that?

8 **A.** That's mine.

9 **Q.** And is that your recording of your lookout or the  
10 beginning of your lookout from April 22nd of this year?

11 **A.** Yes, sir.

12 **Q.** And was that -- is that a fair and accurate  
13 recording of your transmissions, radio transmissions, that  
14 day?

15 **A.** Yes, sir.

16 MR. WASSERMAN: Your Honor, I move for  
17 Government's Exhibit No. 3 into evidence.

18 MR. MARSTON: No objection.

19 MR. OHM: No objection.

20 THE COURT: It is admitted.

21 (Government's Exhibit No. 3 is admitted.)

22 MR. WASSERMAN: Thank you.

23 If you can continue playing until about 6:30.

24 (Played audio.)  
25

1       **BY MR. WASSERMAN:**

2           **Q.**   Officer Jackson, at the time that you gave this  
3       lookout that you just listened to, were both suspects still  
4       in your view?

5           **A.**   Yes.

6           MR. WASSERMAN: I want to direct your attention  
7       now to -- or ask to play Government's Exhibit No. 3 from  
8       about the 6:29 mark to 7:08 of the recording.

9           THE COURT: If you could possibly turn the sound  
10       down a little bit, which may result in having a little less  
11       static. Let's see if that makes it a little easier to hear.

12               (Played audio.)

13       **BY MR. WASSERMAN:**

14           **Q.**   Officer Jackson, at this point of the radio run,  
15       do you know where each suspect was located?

16           **A.**   Can you repeat that?

17           **Q.**   At the time you broadcast this additional lookout,  
18       do you know where your subject was located?

19           **A.**   At that time I couldn't see him. I believe they  
20       walked further in the walkway out of my sight towards the  
21       parking lot.

22           **Q.**   All right.

23           THE COURT: Can you put the volume back up,  
24       please? Thank you.

25           MR. WASSERMAN: I will ask to play now from 7:28

1 to about 7:39 of Exhibit 3.

2 (Played audio.)

3 **BY MR. WASSERMAN:**

4 **Q.** All right. Do you recall if you were able to see  
5 both suspects at this time based on that lookout?

6 **A.** At that time I couldn't see them.

7 **Q.** All right. Backing up then to the previous clip  
8 we played you, which was from 6:29 to 7:08, do you recall --  
9 you initially said you thought they may have walked off?

10 **A.** Yes.

11 **Q.** Do you still have that recollection? In other  
12 words, did they walk off and then come back into your view?

13 **A.** It was pretty much back and forth. I could see  
14 them because arresting hadn't moved in yet. I saw them  
15 reappear again but then they walked back out of my sight  
16 again.

17 **Q.** All right. When they walked back out of your  
18 sight for the second time, which direction did they go?

19 **A.** Back towards the parking lot.

20 **Q.** All right. Away from 15th Street?

21 **A.** Yes, sir.

22 **Q.** Now, in the transmission we just listened to, 7:28  
23 to 7:39, you mentioned that the male with the grayish coat  
24 had an orange hood --

25 **A.** Yeah.

1           **Q.**    -- that you had not mentioned in your first two  
2 lookouts. Was your reference to the orange hood based upon  
3 your own observations?

4           **A.**    Yes.

5           **Q.**    Did anybody tell you that this individual was  
6 wearing an orange hood?

7           **A.**    No.

8           **Q.**    Do you recall why you didn't mention the orange  
9 hood in your initial lookout description?

10          **A.**    I was trying to hurry up -- I was more focused on  
11 the individual wearing the blue coat because I knew he was  
12 in the possession of that book bag. I was trying to  
13 expedite the situation by telling arresting, Look, I need  
14 you to get here right now. I think at the time I probably  
15 didn't give that portion of the lookout because I just  
16 needed the arresting to pretty much get into the area. And  
17 it may have -- I didn't mention the hood at all but I just  
18 -- I was more concerned with the individual wearing the blue  
19 coat.

20          **Q.**    Did there come a point or you indicated there came  
21 a point when both males, both individuals that you just  
22 described, moved out of your line of sight?

23          **A.**    Yes.

24          **Q.**    All right.

25               (Government's Exhibit No. 4 was marked for

1 identification.)

2 MR. WASSERMAN: I am going to show you what we've  
3 marked for identification as Government's Exhibit No. 4.  
4 And I'm going to ask to probably fast forward there to about  
5 19:02:29 --

6 The Court's indulgence.

7 MR. WASSERMAN: I'm sorry. 19:02 to :31.

8 **BY MR. WASSERMAN:**

9 Q. Do you recognize -- did you have an opportunity to  
10 view Officer Poupart's body worn camera from April 22nd of  
11 this year?

12 A. Yes, sir.

13 Q. Was that prior to today?

14 A. Yes, sir.

15 Q. Was Officer Poupart on the scene as part of the  
16 arrest team?

17 A. Yes, sir.

18 Q. And was the footage that you reviewed from Officer  
19 Poupart's body worn camera a fair and accurate recording as  
20 part of the events of that day?

21 A. Yes, sir.

22 MR. WASSERMAN: Your Honor, I move Government's  
23 Exhibit No. 4 into evidence at this time.

24 MR. MARSTON: No objection.

25 MR. OHM: No objection.

1 THE COURT: So moved.

2 (Government's Exhibit No. 4 was admitted.)

3 MR. WASSERMAN: Thank you, Your Honor.

4 **BY MR. WASSERMAN:**

5 Q. I am going to show you Government's Exhibit No.

6 4-A. Is that on your screen?

7 A. Yes, sir.

8 Q. Do you recognize that still shot?

9 A. Yes.

10 Q. And is that a still shot from Officer Poupart's  
11 body worn camera?

12 A. Yes.

13 Q. Who is depicted in this still shot that you are  
14 looking at?

15 A. The individual with the blue coat that would be  
16 Defendant Douglas, and the individual with the grayish/dark  
17 brown coat would be Defendant Williams.

18 Q. And is this a fair and accurate depiction of part  
19 of Officer Poupart's body worn camera?

20 A. Yes.

21 MR. WASSERMAN: Your Honor, I move Government's  
22 Exhibit 4-A into evidence.

23 MR. MARSTON: No objection.

24 MR. OHM: No objection.

25 THE COURT: 4-A is admitted.



1 (Government's Exhibit No. 4-A was admitted.)

2 **BY MR. WASSERMAN:**

3 Q. And do you see -- or can you see the time stamp in  
4 the upper right-hand corner?

5 A. Yes.

6 Q. What does it say?

7 A. It says 2:312, the date is 4-22-2020 and then --

8 Q. I'm sorry. You said you see the time stamp?

9 A. Yes. 2:31 -- I'm sorry. 19:02:312.

10 Q. Yes. Okay.

11 Just so we are clear, do you know whether the body  
12 worn camera time stamp is different -- is it in eastern  
13 standard time?

14 A. Yes, it is.

15 Q. Are you sure about that?

16 A. I am not 100% sure.

17 Q. You are not sure?

18 A. [SHAKES HEAD]

19 Q. All right.

20 MR. OHM: On behalf of Mr. Douglas and for clarity  
21 we will stipulate that it is eastern standard time.

22 THE COURT: Thank you.

23 **BY MR. WASSERMAN:**

24 Q. Was this a little after 3:00 p.m. when this  
25 happened?

1           **A.**    Yes.

2           **Q.**    Thank you. Looking at Exhibit 4-A, which person  
3 in the photo was the person that received the backpack and  
4 handed off the, you know, suspected currency?

5           **A.**    The individual wearing the bluish coat with blue  
6 hood, and that would be Defendant Douglas.

7           **Q.**    And what about -- who actually stopped this  
8 individual?

9           **A.**    To my recollection Officer Poupart.

10          **Q.**    And which person in the photo was the individual  
11 you observed hand off the backpack and receive the suspected  
12 currency?

13          **A.**    The one wearing the orangish hood and reddish  
14 brown colored jacket, Defendant Williams.

15          **Q.**    You said dark colored. Is there anything else  
16 that would distinguish it?

17          **A.**    Light-colored jeans and the bushy hair.

18          **Q.**    All right. And is that individual to the left or  
19 to the right of Mr. Douglas?

20          **A.**    He is to the right of Mr. Douglas.

21          **Q.**    Have you had an opportunity to review a portion of  
22 Officer Andrew Stout's body worn camera?

23          **A.**    Yes.

24

25                   (Government's Exhibit No. 5 was marked for

1 identification.)

2 **BY MR. WASSERMAN:**

3 Q. I will show you what I have marked for  
4 identification Government's Exhibit No. 5. I move that to  
5 19:02:29. And is Exhibit 5 a fair and accurate depiction of  
6 a portion of the events that occurred on April 22nd of this  
7 year?

8 A. Yes.

9 MR. WASSERMAN: Your Honor, I move Government's  
10 Exhibit No. 5 into evidence.

11 MR. MARSTON: No objection.

12 MR. OHM: No objection.

13 THE COURT: Exhibit 5 is admitted.

14 (Government's Exhibit No. 5 was admitted.)

15 MR. WASSERMAN: And if we can play from 19:02:29  
16 to 19:03:41.

17 (Played audio.)

18 **BY MR. WASSERMAN:**

19 Q. All right. Officer Jackson, are you able to see  
20 in Exhibit 5 the individual in the orange hood that you  
21 described in the radio transmission?

22 A. Yes.

23 Q. Was that person in the video wearing the orange  
24 hood standing next to the male in the blue coat?

25 A. Is he there?

1 Q. Is he in the same position as when you initially  
2 observed him?

3 A. No.

4 Q. All right. What area is that relevant to where  
5 you made the observations of the exchange?

6 A. So if you -- actually, if you see where the  
7 individual in this photograph -- I'm sorry -- where the  
8 still is, the individual with the black coat and fur on it,  
9 it would be a little bit further in front of that  
10 individual.

11 Q. All right.

12 MR. WASSERMAN: And this is 19:03:01 of Exhibit 5.  
13 If we can continue to play this until 19:03:39 seconds.

14 (Played audio.)

15 **BY MR. WASSERMAN:**

16 Q. All right. Officer Jackson, do you see anyone in  
17 this part of the video that you recognize?

18 A. Yes.

19 Q. And who is that?

20 A. That individual is Defendant Williams.

21 Q. And which direction does Mr. Williams appear to be  
22 walking at this point?

23 A. Towards 15th Street.

24 Q. And at this point, do you recall where you were  
25 located?

1           **A.**    I believe I was still in my observation, I was  
2 still in the block. Let me see. I believe I was still  
3 there on 15th Street.

4           **Q.**    All right. Are you sure about that or just from  
5 this video or -- let me ask you this: Did there come a  
6 point when you left that location?

7           **A.**    Yes.

8           **Q.**    All right. And do you remember -- where did you  
9 go?

10          **A.**    I went around -- so I went southbound on 15th  
11 Street towards W and then I came back around on Montana  
12 Avenue so I can do the observation process.

13          **Q.**    And at the time that -- if you can recall, at the  
14 time that Mr. Williams, the individual in the orange hood,  
15 was stopped by police, were you -- do you recall whether you  
16 were still in your OP location or had you moved?

17          **A.**    I moved. I was gone at that point.

18          **Q.**    All right. So did you actually observe  
19 Mr. Williams getting stopped by the officers?

20          **A.**    No, I did not.

21          **Q.**    Okay. I want to play you now Government's Exhibit  
22 No. 3 starting at the 9:40 mark.

23                   (Played audio.)

24          **BY MR. WASSERMAN:**

25          **Q.**    Based upon this transmission that you just

1 listened to, that was your voice; is that correct?

2 A. Yes, sir.

3 Q. What, if anything, did you conclude regarding  
4 whether the officers had stopped the individual with the  
5 orange hood that you described?

6 A. They just wanted clarification. Clarification on  
7 what happened, what probable cause existed for this  
8 individual to be arrested.

9 Q. Was it your understanding that they had stopped  
10 that individual?

11 A. Yes, sir.

12 Q. All right. What does 1-800 mean?

13 A. That is our code word for firearm.

14 Q. So what were you explaining to the officer when  
15 you said, "orange hood was good to go for 1-800".

16 A. I was saying the orange hood was the one  
17 originally passing the book bag off. At that point they did  
18 confirm that there was a firearm in the book bag. So what I  
19 was saying was, this individual is good to go for passing  
20 off that firearm that I observed.

21 Q. All right. Was there a point in which you were  
22 able to view both males who had been stopped by police to  
23 see if you can make a positive identification of the two  
24 individuals you observed engage in the transaction of the  
25 backpack?

1           **A.**    Yes.

2           **Q.**    Where were you located when you were viewing the  
3 individual you observed receive the backpack?

4           **A.**    At that time I was in the parking lot off of  
5 Montana.

6           **Q.**    I'm sorry. You were parked in the parking lot?

7           **A.**    Yeah. The parking lot where the arresting team  
8 was moving into.

9           **Q.**    Okay. And do you remember about the distance you  
10 were from where this individual was located, the blue coat?

11          **A.**    From the time I gave the positive identification?

12          **Q.**    When you were doing the identification.

13          **A.**    I would say 15 to 20 yards. I was pretty much at  
14 the mouth of that parking lot on Montana. I am still trying  
15 to maintain an undercover capacity.

16          **Q.**    Were you located in your vehicle?

17          **A.**    Yes, sir.

18          **Q.**    Were there any obstructions of your view of the  
19 individual in the blue coat when you made the  
20 identification?

21          **A.**    No.

22          **Q.**    Do you have any doubts about your identification?

23          **A.**    No.

24          **Q.**    The accuracy of the identification?

25          **A.**    No.

1 Q. Where were you when you were viewing the  
2 individual you observed hand the backpack off?

3 A. On 15th Street.

4 Q. I'm sorry. Where were you when you were doing the  
5 ID procedure?

6 A. ID procedure?

7 Q. Yeah, of the individual who handed the backpack  
8 off.

9 A. Oh, still in the parking lot area.

10 Q. Same location?

11 A. Same location.

12 Q. And any obstructions of your view of that  
13 individual?

14 A. No.

15 Q. Do you have any doubts about the accuracy of your  
16 identification of the individual handing the backpack off?

17 A. No.

18 MR. WASSERMAN: I am going to ask that  
19 Government's Exhibit No. 2 at 10:28 -- I'm sorry.  
20 Government's Exhibit No. 3.

21 (Played audio.)

22 **BY MR. WASSERMAN:**

23 Q. All right. Was that your statement indicating a  
24 positive identification of both males?

25 A. Yes, sir.



1 Q. And at the time that you were viewing both of  
2 these individuals, did anyone on the scene do or say  
3 anything to you to suggest who you should identify?

4 A. No.

5 Q. Do you see the individual who handed the backpack  
6 off in exchange for the suspected currency anywhere in the  
7 courtroom?

8 A. Yeah.

9 Q. Can you identify that person by their location in  
10 the courtroom and an article of clothing they are wearing?

11 A. I can just by the hair alone, the individual  
12 wearing the pink sweat shirt, gray jacket and the hair.

13 MR. WASSERMAN: Your Honor, I would ask that the  
14 record reflect the in-court identification of Defendant  
15 Williams.

16 THE COURT: I would like the Defendant to remove  
17 his mask.

18 **BY MR. WASSERMAN:**

19 Q. Having observed this individual that you mentioned  
20 had the pink sweat shirt on, remove his mask, is that -- are  
21 you able to recognize that individual?

22 A. Yes, sir.

23 Q. Who do you recognize that individual as?

24 A. As Defendant Williams.

25 Q. Is that the person you observed hand the backpack

1 off?

2 **A.** Yes, sir.

3 MR. WASSERMAN: Your Honor, I ask that the record  
4 reflect the in-court identification of Defendant Williams.

5 THE COURT: The record does reflect that.

6 **BY MR. WASSERMAN:**

7 **Q.** Do you see the individual who you observed receive  
8 the backpack and hand the suspected currency to Defendant  
9 Williams in the courtroom?

10 **A.** Yes, sir.

11 **Q.** Can you identify that individual by an article of  
12 clothing they are wearing and the location in the courtroom?

13 **A.** To my left wearing an orange jumpsuit, to my left  
14 of the witness stand.

15 THE COURT: I would, again, ask that the Defendant  
16 Douglas please remove his mask so there is no question that  
17 you can see his face.

18 THE DEFENDANT: Yes, Your Honor.

19 MR. WASSERMAN: Having had Mr. Douglas remove his  
20 face mask, do you continue to indicate that that was the  
21 individual that you observed receive the backpack?

22 THE WITNESS: Yes, sir.

23 MR. WASSERMAN: Your Honor, again, I would move  
24 that the record reflect the in-court identification of  
25 Defendant Douglas.

1 THE COURT: Thank you. The record does reflect  
2 that. Thank you.

3 MR. WASSERMAN: Your Honor, that is all I have.

4 THE COURT: Thank you. Counsel?

5 MR. MARSTON: Thank you, Your Honor.

6 **CROSS EXAMINATION**

7 **BY MR. MARSTON:**

8 Q. Good afternoon, sir. Officer Jackson, I am John  
9 Marston. I represent Mr. Williams. How are you doing  
10 today?

11 A. Pretty good.

12 Q. I appreciate you being here with everything that  
13 is happening.

14 Officer Jackson, let me make sure I understand.  
15 You say you got to this location on 15th Street, 2300 block  
16 about 10 or 15 minutes before you observed this exchange of  
17 a backpack; is that right?

18 A. Yes, sir.

19 Q. All right. And had you been anywhere else that  
20 day earlier, for work while on duty?

21 A. Probably a couple blocks away making observations.

22 Q. What time did you start work that day?

23 A. Our tour of duty started at 1300 hours.

24 Q. Thirteen hundred is?

25 A. 1:00 p.m.

1 Q. 1:00?

2 A. Yes, sir.

3 Q. Okay. This is a couple hours later?

4 A. Yes, sir.

5 Q. What time was it when this exchange happened?

6 A. I can't remember.

7 Q. It was right about 3:00; is that right?

8 A. Yes, sir.

9 Q. I mean, we were watching the body worn camera  
10 footage and you called it a 2, but it is a Z after the time,  
11 which stands for zulu, which is universal time. Does that  
12 make sense?

13 A. Yes, sir.

14 Q. When it says 19:02, for example, universal time,  
15 that time of year you have to subtract 4 hours; 19 becomes  
16 15 that is 3:00. Sound right?

17 A. Yes, sir.

18 Q. Okay. So here we are a little after 3:00 that  
19 day. Is that when you saw this happen?

20 A. Yes, sir.

21 Q. All right. And you mentioned the person you later  
22 identify as Mr. Williams walking up into the -- I guess a  
23 grassy area on the other side of the fence from Mr. Douglas;  
24 is that right?

25 A. Yes.

1 Q. Where did he come from?

2 A. I don't know.

3 Q. Which direction? From the parking lot direction?

4 A. I believe it was from the area of the walkway

5 where there is a parking lot, in back of the row houses

6 there is another walkway. So I am estimating he probably

7 came from that walkway.

8 Q. You couldn't see back there from where you were.

9 Right?

10 A. Correct. Correct.

11 Q. So he came from the direction of the parking lot.

12 Who knows from where back there; is that right?

13 A. Yes.

14 Q. You don't know.

15 A. No, I don't know.

16 Q. Oh, okay. And in other words, that was the first

17 time you had seen him; is that right?

18 A. Yes.

19 Q. He wasn't out in front of those buildings on 15th

20 Street at any point while you were there in the 10 or 15

21 minutes; is that right?

22 A. To my recollection, no.

23 Q. All right. When Mr. Williams walked up in that

24 grassy area, what did he have?

25 A. A little bag.

1 Q. Where was he? Was he holding it? Was he wearing  
2 it?

3 A. He was holding it. He wasn't wearing it. He just  
4 had it in his hand.

5 Q. How was he holding it?

6 A. Holding it out by his arm.

7 Q. Down by his side?

8 A. No, when I first saw him, his arm was extended  
9 with the bag towards Defendant Douglas.

10 Q. So he was handing it off when you first saw it?

11 A. Yes.

12 Q. So you did not see him with the book bag when he  
13 walked up?

14 A. Yes, I did. But then he eventually handed it off.

15 Q. Well, you just told us you didn't see where it  
16 was, whether it was by his side or on his back or whatever;  
17 you said the first time you saw it was when he was handing  
18 it off. It was extended, you said.

19 A. Yes.

20 Q. So then you did not see, before then?

21 A. Are you asking where he came from with it? What  
22 are you asking?

23 Q. When he walked up. You told us you saw him  
24 walking up from the direction of the parking lot area.

25 A. Correct.

1 Q. And if he handed a book bag off later, he must  
2 have had it with him. Right?

3 A. Yes.

4 Q. But you didn't see the book bag at that time?

5 A. I saw it in his hand.

6 Q. You told us you didn't see it until he extended  
7 it. I am talking about before --

8 MR. WASSERMAN: Asked and answered.

9 THE COURT: Overruled.

10 THE WITNESS: I am asking which point you are  
11 talking about. Are you asking when he came from -- when he  
12 first appeared or when I observed him make the hand to hand  
13 exchange?

14 **BY MR. MARSTON:**

15 Q. I appreciate you clarifying. That is exactly what  
16 I should have been doing.

17 You saw it extended in his hand to make an  
18 exchange before that time as he is walking up, you don't see  
19 a book bag then because you first saw it when he extended  
20 it.

21 A. That's correct. That's correct.

22 Q. Got you. Okay. And he extended it with which  
23 hand?

24 A. To my recollection the right hand.

25 Q. What side of the fence was he on then? The grassy

1 side or the walkway side?

2 A. The grassy side.

3 Q. So he -- Mr. Williams -- extends the book bag over  
4 the fence to Mr. Douglas?

5 A. Yes.

6 Q. Okay. When did he hop the fence?

7 A. I don't know. At that point I was watching the  
8 lookout still trying to maintain my undercover capacity.

9 Q. Do you know if he did hop the fence?

10 A. I am assuming he did because he did eventually end  
11 up into the walkway.

12 Q. But we can't assume here. I'm sorry.

13 A. That's correct.

14 Q. Okay. So you don't know?

15 A. I don't know.

16 Q. Okay. Later on you see him walking away --  
17 Mr. Williams walking away from this exchange?

18 A. Later on. Correct. Yes.

19 Q. All right. Was he walking down the walkway then?

20 A. Yes.

21 Q. Okay. During this time you had your eyes, you  
22 mention, on a group on the right-hand side, your right-hand  
23 side, the rec center side. Was your attention ever diverted  
24 over to them around the time of this backpack exchange?

25 A. No.



1           **Q.**    So you sat there watching Mr. Williams and  
2           Mr. Douglas and someone else throughout that time, and  
3           including up to the point of them walking away. You are  
4           watching them the whole time; is that what are you saying?

5           **A.**    Which one?

6           **Q.**    Start with Mr. Williams walking up, extending a  
7           bag over the fence.

8           **A.**    Right.

9           **Q.**    And then you don't see Mr. Williams jump the fence  
10          but you know later on he walked off; is that right?

11          **A.**    Correct.

12          **Q.**    From the time he walked up, to the time he walked  
13          off, you are saying you were watching that whole time  
14          Mr. Williams and Mr. Douglas?

15          **A.**    Yes.

16          **Q.**    And you had a clear line of sight?

17          **A.**    Yes.

18          **Q.**    No obstructions?

19          **A.**    Right.

20          **Q.**    20/20 vision?

21          **A.**    Yes.

22          **Q.**    But you have no idea how he got from the grassy  
23          area to the walkway?

24          **A.**    I am not saying I don't have an idea, I just don't  
25          remember.

1           Q.    That's a poor question on my part.  You didn't see  
2   how he got there.

3           MR. WASSERMAN:  Your Honor, asked and answered.

4           THE COURT:  I will allow again.

5   **BY MR. MARSTON:**

6           Q.    Because I ask a question poorly, which I apologize  
7   for.  You didn't see him -- so we were talking about the  
8   time frame from him walking up, exchange, he walks off, he  
9   starts -- Mr. Williams starts in the grassy area, later on  
10  he is in the walkway and there is a fence between those two  
11  areas.  Right?

12          A.    Yes.

13          Q.    You didn't see how he got over the fence or if he  
14  did?

15          A.    I will say this:  I don't remember because that  
16  part wasn't important to me.  I just don't remember that  
17  part.

18          Q.    Got you.  So while you are there, there are some  
19  things that aren't important to you.

20          A.    That's probably a poor choice of words; however, I  
21  was more focused on the individual in possession of the book  
22  bag.  I try to make my observations as accurate as possible,  
23  but I can't give a complete play-by-play of what everyone is  
24  doing at this particular time because I am trying to do a  
25  bunch of other things, which is maintain my undercover

1 capacity as well.

2 Q. I know. It's not an easy job, obviously. For  
3 sure. I apologize for these questions. It's part of my  
4 job.

5 A. I am trying to be accurate.

6 Q. I hear you.

7 Now, since your focus, I think you had said when  
8 Mr. Wasserman was asking you questions, your focus was on  
9 the blue coat person. Right?

10 A. Correct.

11 Q. Mr. Douglas?

12 A. Yes, sir.

13 Q. And that contributed to you not exactly seeing  
14 everything that Mr. Williams was doing it sounds like; is  
15 that right? Is that fair?

16 A. Which part?

17 Q. Your focus --

18 A. Before or after?

19 Q. Well, after there is an exchange now you've seen a  
20 backpack you feel your focus should be there?

21 A. Absolutely. Yes, sir.

22 Q. Let me ask you this: Your focus is on this  
23 backpack. How did Mr. Douglas put it on?

24 A. He took his jacket off, his blue coat. I keep  
25 saying jacket. He took his blue coat off, put the book bag

1 on his person with the shoulder straps and then subsequently  
2 put the jacket over it, over the book bag, while that book  
3 bag was still on his person.

4 Q. What did he do with his jacket while he was  
5 putting on the backpack?

6 A. I don't remember. He took it off. I can't say he  
7 threw it to the ground. I can't say he had somebody hold it  
8 for him. All I know is he took the jacket off and put the  
9 book bag on and put it on -- and put the jacket over top of  
10 it.

11 Q. And your focus is here, but you don't know -- I  
12 mean, you would agree with me, though, that putting on a  
13 backpack requires both arms to be free. You can't do it  
14 with a jacket partially off. It would be hard to hold on to  
15 a jacket while putting it on. Right?

16 A. Right.

17 Q. Even though your focus is there, you didn't see  
18 what he did with the jacket?

19 A. I could tell you at the time, but right now as I  
20 tell you three months later, I just can't say.

21 Q. Okay. In terms of the backpack, how quickly did  
22 Mr. Douglas put the backpack on? Was it immediate?

23 A. Yes, immediately. After receiving the book bag,  
24 he took his jacket off. He didn't have his jacket on -- he  
25 had his jacket on at the time. He took the jacket off. So

1 what I was trying to say is he didn't already have his  
2 jacket off upon receiving the book bag. He had the jacket  
3 on after receiving the book bag, took the jacket off, then  
4 put the book bag on and covered up the book bag with the  
5 jacket.

6 Q. Okay. And nobody opened the backpack during this  
7 time?

8 A. No.

9 Q. And nobody took anything out of it?

10 A. No.

11 Q. Nobody put anything into it?

12 A. No.

13 Q. That makes sense. There wouldn't have been time  
14 to do that. Right?

15 A. Correct.

16 Q. Now, so the -- all right. So I am trying to  
17 understand the cash, the currency in this situation. And  
18 you had a view of what you believed to be an exchange of  
19 currency from Douglas to Williams; is that right?

20 A. Yes.

21 Q. And where were they standing at that time?

22 A. Still in the same positions. After receiving the  
23 book bag, placed the book bag on, put his jacket over, and  
24 did the hand gesture, as if Williams was receiving the  
25 currency. I could not say that it was U.S. currency, but I

1 did see it was some sort of hand exchange like I mentioned.

2 Q. Was the fence between them still?

3 A. Yes.

4 Q. Okay. Where does Mr. Douglas get this currency  
5 from?

6 A. I cannot tell you that.

7 Q. What did Mr. Williams do with the currency upon  
8 receiving it?

9 A. I do not remember.

10 Q. Was it folded, the currency?

11 A. All I saw was just a small object that I believed  
12 to be U.S. currency.

13 Q. I mean, you did a writeup in this case. Right?

14 A. Correct.

15 Q. A written report?

16 A. Yes.

17 Q. And today you are expressing uncertainty about  
18 whether it was currency. The report expresses no  
19 uncertainty. Would you say that's correct?

20 A. My report reflects the sequence of events that I  
21 observed. I am just basing my observation from that day.

22 Q. I mean, we can get it as an exhibit. I don't know  
23 if we need to. Does this sound right? You said after the  
24 exchange S1 gave S2 an unknown amount of U.S. currency.

25 MR. WASSERMAN: Your Honor, what is he reading

1 from?

2 (Defendant Williams' Exhibit No. 1 was marked for  
3 identification.)

4 MR. MARSTON: Government's (sic) Exhibit 1 -- I'm  
5 sorry. May I approach the witness?

6 THE COURT: You may.

7 **BY MR. MARSTON:**

8 Q. Defendant's Exhibit 1. Do you recognize that?

9 A. Yes.

10 Q. What is it?

11 A. This is my observation notes.

12 Q. Is that how you prepared it?

13 A. Yes.

14 Q. It hasn't been changed by anybody?

15 A. No.

16 MR. MARSTON: Your Honor, ask to admit Defendant's  
17 Exhibit No. 1.

18 THE COURT: Mr. Wasserman.

19 MR. WASSERMAN: I'm sorry. No objection.

20 THE COURT: Defendant's Exhibit No. 1 is admitted.

21 MR. MARSTON: Thank you, Your Honor.

22 MR. OHM: No objection but can it be Defendant  
23 Williams' Exhibit No. 1?

24 THE COURT: Defendant Williams' Exhibit No. 1 is  
25 admitted.

1 (Defendant Williams' Exhibit No. 1 was admitted.)

2 MR. MARSTON: Thank you.

3 **BY MR. MARSTON:**

4 Q. Officer Jackson, do you see the discussion of U.S.  
5 currency in Defendant Williams' Exhibit 1?

6 A. Yes, sir.

7 Q. I mean, it says that is what happened. Right?

8 A. Yes.

9 Q. But you don't know that is what happened.

10 A. That's correct.

11 Q. In terms of the U.S. currency, if it even was,  
12 could you have -- do you have a memory of whether it was one  
13 bill or multiple?

14 A. I cannot tell you that.

15 Q. How far away were you in the car from where this  
16 exchange occurred in the walkway leading to 15th Street?

17 A. Um, you want me to try to estimate feet or yards?

18 Q. You used yards earlier, maybe stick with the  
19 yards.

20 A. Right. I would say maybe about 15 yards.

21 Q. Fifteen yards? You never measured it?

22 A. No.

23 Q. And it was, essentially, too far to see for sure  
24 that it was currency?

25 A. Yes.



1 Q. Tell us about the other person you said who was  
2 there -- well, let's break this up, because I think you  
3 said, at first when you looked over and saw Mr. Douglas,  
4 before Mr. Williams was there. Okay?

5 A. Yes.

6 Q. There were other people out there with  
7 Mr. Douglas?

8 A. Yes.

9 Q. Okay. And what did they -- I mean, these are  
10 other black males?

11 A. Yes.

12 Q. Okay. Also with jeans on?

13 A. I cannot tell you a description of what they had  
14 on at that time. Not right now. At the time I could have.  
15 As of right now, I cannot remember.

16 Q. In one of the Government exhibits, it was from  
17 Officer Poupart's camera, you saw Mr. Douglas with the blue  
18 puffy coat, saw Mr. Williams standing there. You told us  
19 that. There was another individual in that image as well.

20 A. Yes.

21 Q. And the person is a black male?

22 A. Black male wearing a black coat with fur on the  
23 hood.

24 Q. Dark jacket? Jeans?

25 A. Yes.

1           **Q.**    Okay. Okay. Which direction -- I mean, how close  
2           were these other individuals -- so before the exchange, how  
3           close were -- before Mr. Williams is there, how close were  
4           these other individuals to Mr. Jackson?

5                    I completely blew that. You are Mr. Jackson.

6           **A.**    Yes, sir.

7           **Q.**    So before Mr. Williams arrives, before the  
8           exchange, when it is just Mr. Douglas out there, and there  
9           are other individuals there, you said as well, how close  
10          were those other individuals to Mr. Douglas?

11          **A.**    The best I could describe is just near him. I  
12          can't give you an approximate feet. I just can't tell you  
13          that, but I can tell you they were near Mr. Douglas at the  
14          time. I am trying to be as accurate as possible.

15          **Q.**    I appreciate that. Did it look like they were  
16          talking to each other?

17          **A.**    Yes.

18          **Q.**    I am going to go to what is called a show up, like  
19          when you went to view the suspects --

20          **A.**    Yes.

21          **Q.**    -- and make an identification.

22          **A.**    Yes.

23          **Q.**    This is Defendant Williams' Exhibit No. 2.

24                   (Defendant Williams' Exhibit No. 2 was marked for  
25          identification.)

1 MR. MARSTON: I think I will just put it up here.

2 (Put on overhead projector.)

3 **BY MR. MARSTON:**

4 Q. So this is the same vicinity we have been talking  
5 about, the 2300 block, 15th Street. Does that look right?

6 A. Yes.

7 Q. Okay. Now, you had mentioned that when you did  
8 the identification you were still in your vehicle?

9 A. Yes.

10 Q. You were at the mouth of the parking lot you said.  
11 Do you remember that?

12 A. Yes.

13 Q. I am going to point over here to -- so the bottom  
14 left of Defendant Williams' 2 is 15th Street -- actually, is  
15 this a fair and accurate depiction of this vicinity?

16 A. Yes.

17 MR. MARSTON: Can I have Defendant Williams'  
18 Exhibit 2 admitted into evidence?

19 MR. WASSERMAN: No objection.

20 THE COURT: So admitted.

21 (Defendant Willisams' Exhibit No. 2 was admitted.)

22 **BY MR. MARSTON:**

23 Q. We see the walkway jutting from the bottom  
24 left-hand corner to the center of the picture. Right?

25 A. Yes.

1 Q. Here we see the triangle-shaped parking lot.

2 Right?

3 A. Yes.

4 Q. With a triangle-shaped median?

5 A. Yes.

6 Q. And the entrance to the parking lot is all of the  
7 way up here in the upper right corner. Right? What is this  
8 street? Montana?

9 A. Montana Avenue, yes.

10 Q. And there is only one way into the parking lot; is  
11 that right?

12 A. Yes.

13 Q. And I am pointing to it at the upper-right corner.  
14 Right?

15 A. Yes.

16 Q. I will just write E on there for entrance; is that  
17 all right?

18 A. Yes.

19 Q. You say you were at the mouth of the parking lot  
20 for identification. Is that where you were roughly, where  
21 the E is?

22 A. Yes, sir.

23 Q. And the suspects were being held right in the  
24 center of this picture, on these sidewalks right here; is  
25 that right?

1           **A.**    Yes.

2           **Q.**    Okay.  So was Douglas over here?  I am pointing to  
3           a spot just rear and to the right of a white car parked in  
4           the middle of the picture.

5           **A.**    Yes.  However, this picture does not depict the  
6           cars at the time.

7           **Q.**    That's a good point.  This is not a picture from  
8           that day.  Correct?

9           **A.**    From that day.  Right.

10          **Q.**    Very good.  But so Douglas was here where I am  
11          pointing -- it's hard to see.  Do you want me to come up  
12          there?

13          **A.**    No, you are fine.

14                MR. WASSERMAN:  You can zoom in a little bit on  
15          that too.

16                MR. MARSTON:  Oh, there we go.  Thank you.

17          **BY MR. MARSTON:**

18                **Q.**    Roughly here?

19                **A.**    Yes.

20                **Q.**    Is it okay if I put a D there for Douglas?

21                **A.**    Let me make sure.

22                **Q.**    Yeah.

23                **A.**    That's good.  That's good.

24                **Q.**    Okay.  Okay.  Where is Mr. Williams?

25                **A.**    At the time I saw him, roughly around right in

1 this area. Move your pen to the left around in that area.

2 Q. Around here?

3 A. Go back to the left. I am estimating but around  
4 that area.

5 Q. Do you mind if I put a W there?

6 A. This is an overview of the row house, so it's kind  
7 of shady in that area.

8 Q. Got you. I guess we can kind of see it.

9 So here is where you make the positive  
10 identification. I mean, if you look on this picture,  
11 bottom-left corner is roughly, you know, where you were  
12 parked, where I am pointing now. Right?

13 A. Are you asking me was I parked there doing  
14 observation?

15 Q. I'm sorry. During the observation post, you are  
16 out here on the street. Right here. Right?

17 A. Yes.

18 Q. I am just going to put a circle there, roughly.  
19 This does not write on there.

20 MR. WASSERMAN: Want a different marker?

21 MR. MARSTON: Yeah. Thank you.

22 THE WITNESS: Sir, I would put it more like where  
23 -- not that far back but more towards the rear of the van.

24 **BY MR. MARSTON:**

25 Q. I agree. The speed bump makes the triangles. So

1 it's right about here?

2 A. Yes.

3 Q. Okay. And the exchange, you said, was in the  
4 walkway. Am I pointing to that vicinity now?

5 A. Come down to the left. That's fine.

6 Q. I will put an X there. X for the exchange?

7 A. Yeah.

8 Q. So look here is the E. I will circle the E. You  
9 remember that. Right? That was for where you did the --  
10 where you were for the identification.

11 A. Yes.

12 Q. And so you are even further away from the people?

13 A. Yes.

14 Q. Okay. And I mean, look, we saw on the video,  
15 there's cars. These aren't the cars from that day. There  
16 are a number of cars parked on the bottom right side of the  
17 triangle-shaped parking lot. Right?

18 A. Right.

19 Q. When you are there that day?

20 A. Yes.

21 Q. Then there are police who arrive and park in the  
22 middle of this bottom right part of the triangle where I am  
23 pointing now. Right?

24 A. Correct.

25 Q. Somehow you look from the mouth of this parking

1 lot all of the way down past all of those things and people  
2 and you are able to make an identification?

3 A. Yeah.

4 Q. The identification that you made was based on  
5 clothing primarily?

6 A. Clothing and hair and what I observed.

7 Q. Okay. You wouldn't have been able to see faces  
8 from that distance. Right?

9 A. Not from that distance. Correct.

10 Q. Okay. Now you told us -- this is a very important  
11 part of the case.

12 A. Say it again.

13 Q. This is a very important part of your job. Right?

14 A. Yes.

15 Q. Observing is critical to conducting an observation  
16 post.

17 A. Yes.

18 Q. Okay. And the first time you voice a lookout with  
19 regard to, you know, let's call it blue and orange. Blue  
20 for Mr. Douglas. Orange for Mr. Williams. The first  
21 lookout with regard to Mr. Williams was for -- we just heard  
22 it was a black male with a gray coat?

23 A. Correct and bushy hair.

24 Q. Well, the first time you said black male with gray  
25 coat.



1           **A.**    Correct.   Followed up by bushy, bushy-ish hair.

2           **Q.**    Then sometime later on the recordings, I think it  
3   is merely 50 seconds later, black male -- this was just with  
4   regard to Mr. Williams, not the blue coat.  You are always  
5   consistent on the blue coat.  Correct?

6           **A.**    Right.

7           **Q.**    So then regarding Mr. Williams, black male --  
8   second time, about 50 seconds -- not quite 50 seconds later  
9   black male with gray coat, with puffy hair?

10          **A.**    Correct.

11          **Q.**    His hair is real messy?

12          **A.**    Correct.

13          **Q.**    We haven't heard anything about an orange hood at  
14   this point?

15          **A.**    The second time.

16          **Q.**    Yeah, first time or second time you never said  
17   anything about an orange hood.

18          **A.**    Which --

19          **Q.**    We can go through it again.  The first time you  
20   spoke.  We heard it on the radio with regard to  
21   Mr. Williams, black male with a gray coat.

22          **A.**    Correct me if I'm wrong, I believe the second  
23   sequence was, move in -- it was the sequence where I did say  
24   the blue coat was with the gray jacket with the orange hood.

25          **Q.**    Mr. Douglas is not my client and you mentioned

1 blue coat, kind of from the beginning, for Mr. Douglas?

2 A. Correct.

3 Q. Your focus was on him?

4 A. Correct.

5 Q. And so I am really just focusing on Mr. Williams.

6 A. Okay.

7 Q. So for the first time when you mention the second  
8 person, you could say the giver of the bag --

9 A. Correct.

10 Q. All right. Black male with gray coat; is that  
11 your lookout?

12 A. Correct.

13 Q. All right. Don't mention an orange hood?

14 A. Correct.

15 Q. Second time, black male with gray coat with puffy  
16 hair. His hair is real messy.

17 A. Correct.

18 Q. And it's like, you know, 50 seconds later. It has  
19 to be after this whole exchange occurred. Right? You said  
20 it took 30, 45 seconds, whatever it was, for the whole thing  
21 to occur?

22 A. For the exchange or the stop?

23 Q. For the exchange.

24 A. For the exchange. Correct.

25 Q. So the exchange is over at that point?

1           **A.**    Correct.

2           **Q.**    You are still not mentioning an orange hood.

3           **A.**    Correct.

4           **Q.**    At that point Mr. Williams has walked away.

5   Right?  You said he walked away --

6           **A.**    Yes.

7           **Q.**    -- and later came back.  Kind of walking around?

8           **A.**    Correct.

9           **Q.**    All right.  And so then over almost a minute and a  
10   half later, now you say Mr. Williams walks back up the  
11   walkway.  Now you can see him again.  Right?

12          **A.**    Did I say that?  I saw him --

13          **Q.**    I thought you told us when Mr. Wasserman was  
14   asking questions, there is the exchange.

15          **A.**    Correct.

16          **Q.**    Mr. Williams walks up.

17          **A.**    Correct.

18          **Q.**    And Mr. Williams walks back into your line of  
19   sight.

20          **A.**    Correct.  I gave the lookout.  Am I giving the  
21   lookout?

22          **Q.**    Yeah.  So there is the exchange, which you call  
23   out.  Then a minute and a half later, on the recording at  
24   least, you know, you mention for Mr. Williams, black male  
25   with grayish coat with orange hood; that's the first time

1 you say orange hood?

2 A. Correct.

3 Q. Now, is Mr. Williams in your line of sight at that  
4 point?

5 A. Yes.

6 Q. So while he's there you don't mention anything  
7 about an orange hood the first time?

8 A. The first time. Correct.

9 THE COURT: Mr. Marston, how much longer do you  
10 have? I just want to be cognizant of how long the court  
11 reporter's been going.

12 MR. MARSTON: If we took a break, I might be able  
13 to narrow it down to another 10 to 15 minutes.

14 THE COURT: Why don't we do that. We have been  
15 going almost two hours already. Why don't we take a short  
16 recess until 1:10 p.m.

17 MR. MARSTON: Very good.

18 THE COURT: Be back in 20 minutes.

19 MR. MARTSON: Thank you.

20 (Recess.)

21 CLERK: We are now back on the record.

22 **BY MR. MARSTON:**

23 Q. Officer Jackson, a limited number of additional  
24 questions. Okay. Hopefully it won't be too much longer.

25 In your various lookouts that related to,

1 ultimately, Mr. Williams in this case, you did not mention  
2 age; is that right?

3 **A.** Did you say age?

4 **Q.** Right.

5 **A.** Correct. No, I did not.

6 **Q.** You did not mention height; is that right?

7 **A.** No, I did not.

8 **Q.** You did not mention weight?

9 **A.** No, I did not.

10 **Q.** You did not mention build?

11 **A.** Correct. No, I did not.

12 **Q.** All right. And those are pretty standard things,  
13 I mean, wouldn't you agree, to include in a lookout, if  
14 able?

15 **A.** If able, yes.

16 **Q.** Okay. They are on all of the police forms. Age,  
17 height, weight. Among clothing and other things. Right?

18 **A.** Correct.

19 **Q.** All right.

20 You said you've done over 500 operations in 20  
21 years; is that right?

22 **A.** Yes.

23 **Q.** How many arrests has that resulted in? Do you  
24 know?

25 **A.** From my observations or just being part of

1 operations?

2 Q. Well, so out of the 500 operations, how many of  
3 those are you in observation post?

4 A. I would say 500.

5 Q. Okay. And out of those 500 where you are in  
6 observation post, how many of those resulted in an arrest?

7 A. You want me to try to give -- I would say close to  
8 500.

9 Q. Okay. It's just about every time it sounds like;  
10 is that right?

11 A. Just about. There are times when I call out  
12 observations and there's -- my observations were not proven  
13 to be illegal.

14 Q. Like in this case if they open up the bag and  
15 there's nothing in it, it wouldn't have amounted to  
16 anything.

17 A. Correct. There have been instances -- giving just  
18 an example -- instances where I seen a hand-to-hand exchange  
19 and it turned out to be a signaling or something like that.

20 Q. Got you. Okay.

21 And essentially, all of those, you know,  
22 approximately 500 arrests where you were in observation  
23 post, involve a show-up identification similar to here.  
24 Correct?

25 A. Right.

1           Q.    Have you ever been involved in a show up where you  
2           were in the observation post and said, Nope, that's not him?

3           A.    Yes.

4           Q.    Okay.  How often does that happen?

5           A.    You mean a number or just --

6           Q.    Yeah.  Whatever you can do?

7           A.    That's a long time.  I would say more than 10.

8           Q.    More than 10?

9           A.    Yes.

10          Q.    But not a lot more than 10?

11          A.    It could be a lot more but that's -- at minimum.

12          Q.    The minimum of 10?

13          A.    It's hard to really say.

14          Q.    Okay.  So out of 500 it could be 490 times you got  
15          the guy.

16          A.    It could be.

17          Q.    Okay.

18          A.    I don't like to mess around with numbers because I  
19          am trying to be as accurate as possible.

20          Q.    Okay.  I mean, the operation is designed to arrest  
21          people who are engaged in illegal conduct.  Right?

22          A.    Yes.

23          Q.    And it would be -- the operation would not succeed  
24          if somebody engaged in some conduct you thought was illegal  
25          and the person didn't get arrested?

1           A.    Repeat that.

2           Q.    It would be a failure of the operation if you  
3   observed what you thought was illegal conduct and those  
4   people were not arrested.

5           A.    I wouldn't say failure.

6           Q.    Is it a success?

7           A.    If the person -- I can't understand what you are  
8   asking me.

9           Q.    You know what, I am through. I don't have any  
10   further questions. Thank you.

11           THE COURT: Mr. Ohm.

12           MR. OHM: Good afternoon, Your Honor.

13                           **CROSS EXAMINATION**

14           BY MR. OHM:

15           Q.    You said that you were out there on observation  
16   post operation. Correct?

17           A.    Correct.

18           Q.    You weren't there targeting Mr. Douglas. Right?

19           A.    Correct.

20           Q.    The operation wasn't targeting Mr. Douglas?

21           A.    Correct.

22           Q.    It wasn't targeting Mr. Williams. Right?

23           A.    Correct.

24           Q.    In fact, it wasn't targeting anyone individually?

25           A.    Right.



1           **Q.**    You were just out there looking to see if there  
2                   were any hand-to-hand transactions that the police would  
3                   further want to investigate?

4           **A.**    Yes.

5           **Q.**    There were no complaints by neighbors calling 911  
6                   saying man with the gun, man selling drugs or nothing like  
7                   that?

8           **A.**    Correct.

9           **Q.**    This is more of a proactive thing that the  
10                  narcotics unit does.

11          **A.**    Correct.   Yes.

12          **Q.**    You testified that you are part of the narcotics  
13                  unit.   Right?

14          **A.**    Yes.

15          **Q.**    Which is a subdivision of the narcotics and  
16                  special investigation division?

17          **A.**    Yes, sir.

18          **Q.**    Okay.   So you are generally -- your mission is to  
19                  get drugs off the street; is that fair?

20          **A.**    Yes.

21          **Q.**    And that's what you were doing when you were -- on  
22                  April 22nd, you were doing an anti-narcotics operation.  
23                  Right?

24          **A.**    Yes, essentially.   I can't base it on narcotics  
25                  alone because we are always -- the number one priority is

1 illegal firearms, which we do, people get injured and death  
2 and stuff.

3 Q. Right. So if you saw a robbery in front of your  
4 eyes, you don't say, I am a narcotics officer.

5 A. I am not trying to limit our observations to just  
6 drugs.

7 Q. There is a drug recovery unit. Right?

8 A. That's right.

9 Q. That's a separate part of the department?

10 A. Yes.

11 Q. Their focus is on drugs?

12 A. Yes.

13 Q. You are part of the drug unit. Right?

14 A. Yes.

15 Q. And your focus is on drugs?

16 A. Yes.

17 Q. And on this day, this operation was a pretty  
18 extensive operation. Right?

19 A. Yes.

20 Q. It would be fair to say that there were a lot of  
21 officers involved in the operation?

22 A. Yes.

23 Q. Okay. How many officers were involved?

24 A. Do you mean undercover officers or undercover  
25 officers and arresting members?

1 Q. Let's start with undercover officers.

2 A. Undercover officers, I can best remember maybe  
3 four to five. It could have been four. Those are the only  
4 ones I can think of offhand.

5 Q. And how many uniformed officers?

6 A. I can think of maybe 10 to 15 uniform. I am just  
7 giving an estimate. I am not 100% sure.

8 Q. Okay. And so just to be clear, when a person --  
9 when an undercover says, Move in, the entire arrest team  
10 goes and moves in. Right?

11 A. In this particular situation or are you just  
12 asking about --

13 Q. Well, let's start generally. You don't have --

14 A. I'm sorry. I am not trying to be confusing. I  
15 just want to be as accurate as possible.

16 Q. Great.

17 A. I don't have officers assigned to me. It is  
18 generally undercover officers in the neighborhood. Based  
19 off of their observations they will say, I need arrest team  
20 members to move in.

21 Q. Okay. And that's what happened here. Basically,  
22 the whole arrest team moved in once you gave the call to  
23 move in?

24 A. Yes.

25 Q. Now, when you gave the call to move in, you didn't

1 know what was inside of the bag.

2 **A.** That's correct.

3 **Q.** You didn't know if it was contraband.

4 **A.** No, I did not know.

5 **Q.** You didn't know if it wasn't contraband.

6 **A.** That's correct.

7 **Q.** And your suspicion was based upon a hand-to-hand  
8 transaction for what you thought might be money. Right?

9 **A.** Correct.

10 **Q.** And you testified today that you are really not  
11 sure. You just know it was a white piece of paper.

12 **A.** I didn't say white piece of paper. I just said  
13 white colored object.

14 **Q.** So what you saw was a white-colored object. You  
15 didn't know what it was.

16 **A.** Correct. I cannot testify and tell you, yes, for  
17 sure, that was U.S. currency.

18 **Q.** You remember it was a white-colored object.  
19 Right.

20 **A.** Say again? Are you saying white or light? I am  
21 saying light not white. I'm sorry about that.

22 **Q.** Do you remember seeing a light-colored object?

23 **A.** Yes.

24 **Q.** And sitting here today remembering the  
25 light-colored object you could say definitively that you are

1 not sure what that light-colored object was?

2 A. Correct. I cannot tell you that I am 100% sure it  
3 was U.S. currency.

4 Q. Well, I don't want to say -- the two choices are  
5 100% or 0%. It sounds like you are saying that you really  
6 don't know what it was.

7 A. That's correct. I just can't say.

8 Q. Okay. So you are not 80% sure?

9 A. I can't say.

10 Q. You just can't say one way or the other.

11 A. I can't say; that's correct.

12 Q. Now, when you're sitting there in your police car  
13 making these observations, all of these other arrest team  
14 individuals, they are waiting for you to make -- tell them  
15 whether they should make a move or not. Right?

16 A. Yes.

17 Q. And you are -- one of the most important things is  
18 to make sure you are getting a good look at what is going  
19 on. Right?

20 A. Yes.

21 Q. So you are not on the side of the street on 1500  
22 that -- of what you are observing, you are across the  
23 street; is that fair?

24 A. Right.

25 Q. You are parallel parked?

1           **A.**    Yes.

2           **Q.**    Is it fair to say that across the street there are  
3 other cars that are parallel parked?

4           **A.**    Yes.

5           **Q.**    And it looked like from Government's Exhibit 2  
6 that at least part of your vision would be blocked by some  
7 of the cars; is that fair?

8           **A.**    Which exhibit?

9                   MR. OHM:  Your Honor, I am showing the witness  
10 Government's Exhibit 2, which was previously admitted.  
11 There is a zoom button somewhere.

12                   CLERK:  On the screen, the little button.

13                   MR. WASSERMAN:  Is that our exhibit or something  
14 that --

15                   MR. OHM:  It's my copy of the defendant's exhibit.

16                   THE COURT:  Why don't we use, so the record is  
17 clean, the exhibit that was, in fact, admitted.

18                   MR. OHM:  In terms of touching, Your Honor.

19                   THE COURT:  Oh, that's fair.  Do you have any  
20 reason to believe that the photograph is in any way  
21 different than the Government's?

22                   MR. WASSERMAN:  No, Your Honor.  It is in the  
23 plastic sleeve because it is distorted.

24                   THE COURT:  Remove it from the --

25                   MR. WASSERMAN:  It appears to be the same shot.

1 THE COURT: Mr. Marston?

2 MR. MARSTON: I just would note, I think  
3 Government's Exhibit 2 as it was admitted has a marking on  
4 it with a green marker, which to the extent that makes a  
5 difference, but I think it was just a circled car.

6 THE COURT: It was a circled car on the right-hand  
7 side. I think because of concerns about different people  
8 touching exhibits, we will just go ahead with this version,  
9 Mr. Ohm. Thank you, Mr. Marston.

10 MR. WASSERMAN: Should we mark it as Defendant  
11 Douglas' Exhibit 1?

12 THE COURT: Sure.

13 MR. OHM: I will mark this as Defendant's Exhibit  
14 D, Douglas, 1 which is also Government's Exhibit 2.

15 **BY MR. OHM:**

16 Q. Do you see that, Officer?

17 A. Yes, sir.

18 Q. As Mr. Marston was saying, there is a black sedan  
19 on the other side of the street that you marked with a green  
20 marker earlier. Right?

21 A. Correct.

22 Q. And that is where my pen is now; is that right?

23 A. Yes, sir.

24 Q. I will mark a circle around it. And that's where  
25 you are. Right?

1           **A.**    Yes.

2           **Q.**    You are positioned in the driver's side of that  
3 vehicle?

4           **A.**    Yes, sir.

5           **Q.**    The front, driver's side?

6           **A.**    Yes, front, driver's side, yes.

7           **Q.**    Now, you, in terms of where the walkway is, the  
8 walkway is a little bit to the left of the center of the  
9 exhibit. Right?

10          **A.**    Yes.

11          **Q.**    Between your line of sight and where the walkway  
12 is, there is at least one SUV, a white SUV. Do you see  
13 that?

14          **A.**    Yes, sir.

15          **Q.**    Is it fair to say that that, under certain  
16 circumstances, that that might block your vision?

17          **A.**    That's correct, yes, sir.

18          **Q.**    And you also see the big tree in the middle.  
19 Right?

20          **A.**    Correct.

21          **Q.**    And that's to the right of the exhibit right -- if  
22 you are looking at it, in front of the SUV. Right?

23          **A.**    Yes, sir.

24          **Q.**    It's sort of in your line of vision too.

25          **A.**    Correct.



1 Q. And the activity you are looking at is on this  
2 wall. Right?

3 A. Correct.

4 Q. I think you previously said that it was around  
5 where the building begins or ends; is that fair?

6 A. Yes.

7 Q. Okay. So I am going to mark that here also.

8 A. Are you saying the exchange? Which part?

9 Q. Yeah. The people coming together.

10 A. I wouldn't say right there.

11 Q. I'm sorry. Where would you say?

12 A. Let's go about -- down, come down, no, about right  
13 where that shadow is.

14 Q. Right here?

15 A. Yeah. About here.

16 Q. I will draw an X where my original marking is and  
17 I will say the exchange is at the circle where the shadow  
18 is. Is that a fair depiction of where it was?

19 A. Let me make sure. I am not trying to be  
20 difficult, I am trying to be as accurate as possible.

21 I would say that's fair.

22 Q. Okay. You are looking at this part from your car,  
23 the black car where the first circle is. Right?

24 A. Yes.

25 Q. And I think you were testifying earlier that

1 you're essentially -- for Mr. Douglas, you are seeing his  
2 back?

3 A. Yes.

4 Q. And sort of his right side; is that right?

5 A. Correct.

6 Q. Okay. So is it fair to say that you could not see  
7 his face at that point?

8 A. That's correct.

9 Q. I think you also testified when you identified,  
10 when you did the drive-by identification, that you weren't  
11 identifying a face. You were identifying clothes.

12 A. Yes.

13 Q. Because you never really got a good look at the  
14 faces. Correct?

15 A. I got a good look at the face, but I didn't base  
16 my identification process on the face alone. I based it on  
17 the article of clothing.

18 Q. Well, it's a little bit different than what you  
19 said a little bit ago.

20 A. Okay.

21 Q. You said you identified them based on the clothes.  
22 Right?

23 A. Correct.

24 Q. Not the face. Right?

25 A. No, you were asking -- I could have been confused,

1 but I am not saying that I didn't see his face. I did see  
2 his face. I just didn't base my identification process on  
3 that alone.

4 Q. Sure.

5 A. I based my identification process on the clothing.  
6 I did see his face. I just didn't base the identification  
7 process on that.

8 Q. Let me just be clear. You testified that you  
9 noticed a man in blue because he was standing there in the  
10 walkway. Right?

11 A. Correct.

12 Q. He wasn't really doing anything, and he was  
13 standing with his back towards you. Right?

14 A. At which point? During the exchange or just  
15 during my observations?

16 Q. During your observations.

17 A. No, he wasn't standing with his back towards me  
18 the whole entire time. To the best of my recollection,  
19 probably just walking back and forth, but that is the best I  
20 can describe it.

21 Q. So when you say "best of your recollection" and  
22 "probably" it makes it seem like you are putting pieces  
23 together. It's important to know what you actually remember  
24 seeing versus what you are sort of inferring.

25 MR. WASSERMAN: Your Honor, I would object.

1 Leading, Your Honor.

2 THE COURT: Sustained.

3 **BY MR. OHM:**

4 **Q.** Do you remember seeing him walking back and forth?

5 **A.** Yes.

6 **Q.** Could you describe that for us, because I don't  
7 remember you saying that.

8 **A.** I am talking about prior to the exchange, and  
9 that's just walking back and forth; that's the best I can  
10 describe it.

11 **Q.** Okay. Is it fair to say, though, that you weren't  
12 focused on the man in blue at that point?

13 **A.** That is correct. That's why it may come off like  
14 I am being uncertain, but I wasn't completely focused on the  
15 man in blue at the time. But to the best of my  
16 recollection, I do remember some walking back and forth, but  
17 that is about it.

18 **Q.** So you now remember you saw a face during that  
19 time when you were sitting in the black car and seeing a man  
20 walk back and forth?

21 **A.** A face?

22 **Q.** A face.

23 **A.** Yeah. Yes. Yes.

24 **Q.** Okay. But on direct examination you were saying  
25 that when you did the actual identification part, you were

1 over by the mouth of the parking lot and your identification  
2 was just based on clothing?

3 A. Correct. Right.

4 Q. Okay.

5 When you made the identification, the person you  
6 identified was surrounded by police officers; is that fair?

7 A. Can you move your notes on the projector?

8 Q. You will get a preview of my questions.

9 A. I don't want a cheat code.

10 Q. I forgot my question. So you had -- officers were  
11 surrounding the person in blue at the time of the  
12 identification. Right?

13 A. Yes.

14 Q. Was the person handcuffed?

15 A. Yes.

16 Q. Was he still wearing the blue jacket?

17 A. Yes.

18 Q. Were there also police cars there?

19 A. Yes.

20 Q. How many officers would you say were there?

21 A. Off hand, like I said, maybe four to five.

22 Q. Okay. And while they were arresting him, you were  
23 listening. Right? You were on the radio with the arrest  
24 team. Right?

25 A. Yes.

1           **Q.**    You could hear them arresting him, essentially.  
2    Right?

3           **A.**    Yes.

4           **Q.**    Okay.

5           **A.**    I'm sorry. I am not trying to be difficult. I  
6    could hear that they had stopped him. At that point he  
7    wasn't arrested. Is that what you were asking. Or was he  
8    under arrest?

9           **Q.**    Did you hear them moving in on the person you  
10   described?

11          **A.**    Yes. Correct. He wasn't under arrest at that  
12   point.

13          **Q.**    That's a legal conclusion; is that fair?

14          **A.**    Yes.

15                THE COURT: You did use that term yourself.

16                MR. OHM: That's true. That's also fair.

17                THE WITNESS: And I'm trying to be clear, Mr. Ohm.

18   **BY MR. OHM:**

19          **Q.**    At the time he was in handcuffs, let's put it that  
20   way.

21          **A.**    Okay.

22          **Q.**    From the time you put out the lookout and the time  
23   the arresting team went to put him in handcuffs, you were in  
24   communication with them. Right?

25          **A.**    Correct.

1           **Q.**    You were also in communication from the time that  
2           they had him in handcuffs to the time they brought him to  
3           the parking lot.   Right?

4           **A.**    Correct.

5           **Q.**    All right.

6                    So you knew you were looking at the person that  
7           the officers had stopped after you gave your direction?

8           **A.**    Can you repeat that question?

9           **Q.**    You knew the person that was being presented to  
10          you, the person in blue, was the person that the officers  
11          had stopped after you gave the direction to move in?

12          **A.**    No.   And the only reason why I am trying to  
13          clarify is essentially he went out of my sight and I did not  
14          see him being stopped.   I kept continually asking, Do you  
15          have him stopped?

16          **Q.**    Okay.

17          **A.**    I don't know if that clarifies anything.   I did  
18          continually ask, Do you have the blue coat stopped?   Because  
19          I didn't see him being stopped.   It wasn't until I came  
20          around, that's when I saw him stopped.

21          **Q.**    Okay.   When you asked that question, they said,  
22          Yes.   Right?

23          **A.**    To my recollection, yes.

24          **Q.**    So you didn't see --

25          **A.**    I did not see the stop.

1           **Q.**    You did get confirmation from them that they were  
2           stopping the person you directed them to stop?

3           **A.**    Correct.  Yes.

4           **Q.**    Okay.  Now in terms of the things that you  
5           observed from your driver's seat, were you able to describe  
6           the bag?

7           **A.**    All I remember was a dark-colored bag; that was  
8           it.

9           **Q.**    From where you were sitting, you couldn't see the  
10          colors of the bag other than the fact it was dark?

11          **A.**    Yeah.  At the time I could see what color it was  
12          but right now as I am telling you I cannot remember what  
13          color it was.

14          **Q.**    Okay.  And then I think that you had -- how would  
15          you describe, if you could, the action and motions of the  
16          individual putting the bag on?

17          **A.**    Sure.  After receiving that book bag, he quickly  
18          took off his jacket; I can't remember what he did with the  
19          jacket.  He put the book bag on his shoulders as he wore a  
20          book bag regularly and put his jacket over top of that.

21          **Q.**    Okay.  So when you say "quickly", are you saying  
22          that as soon as he got the bag he took off his jacket or are  
23          you describing some action where the actual taking off of  
24          his jacket?

25          **A.**    Repeat that question.



1           **Q.**    Okay.  You used the adverb quickly for taking off  
2   the jacket.

3           **A.**    Right.  I am only referring that to his action the  
4   way it appeared while he was taking -- it looked like -- he  
5   wasn't taking it off slowly.  It was hurrying it up and  
6   taking it off and putting the book bag on.  When I say  
7   quickly, I am describing that action.

8           **Q.**    So you're saying that the whole thing was sort of  
9   -- he did it as quick as possible?

10          **A.**    Not Incredible Hulk, tearing clothes off, but the  
11   motion I am trying to best describe -- and I'm sorry if I am  
12   being confusing but I can tell you, I remember him taking  
13   his jacket off in a quick motion and putting the book bag on  
14   in a quick motion; that's the best I can describe it.

15          **Q.**    The quick part is taking the jacket off?

16          **A.**    Yes.

17          **Q.**    Not the putting it back on?

18          **A.**    I would say that would be a quick part too.

19          **Q.**    And putting the jacket back on?

20          **A.**    Hurrying up taking the jacket off and hurrying up  
21   putting the jacket on.

22          **Q.**    So you have a very clear memory of this?

23          **A.**    Yes.

24          **Q.**    So where was the jacket?

25          **A.**    I don't know.  That's what I am trying to tell

1     you. I don't know where the jacket was. I just remember  
2     him taking the jacket off, putting the book bag on, and  
3     putting the jacket back on. I don't know if it was in his  
4     hands or between his legs. I don't remember.

5           **Q.** Now, you testified about your general practice as  
6     undercover. You are looking for things that seem like they  
7     are secretive or whatever.

8           **A.** Correct.

9           **Q.** That might include if I went and talked to  
10    Mr. Marston and said something to him, that might be  
11    something you would consider secretive?

12          **A.** Correct.

13          **Q.** One of the things that you look for is the  
14    transaction of hand-to-hand and the parties just dispersed  
15    or separate. Right?

16          **A.** At which point?

17          **Q.** For example, in the hand-to-hand drug transaction,  
18    and you've been doing it for 20 years so you've seen a long  
19    history of hand-to-hands.

20          **A.** Yes.

21          **Q.** Somebody could come, do a hand-to-hand, receive  
22    something. The buyer leaves. The seller stays. That's  
23    pretty typical?

24          **A.** Right.

25          **Q.** The buyer and seller are not just going to hang

1 out.

2 A. Right.

3 Q. And in your -- in this situation it sounds like  
4 what you are saying is, the transaction that you observed,  
5 you are assuming that it was a sale. Right?

6 A. It appeared.

7 Q. It's an assumption. Right?

8 A. Right.

9 Q. You don't know if there was money.

10 A. That's correct.

11 Q. And you didn't hear anything between them. Right?

12 A. That's correct.

13 Q. Oftentimes a buyer will look and inspect a  
14 product. Right?

15 A. Correct.

16 Q. You didn't see any inspecting of a product.  
17 Right?

18 A. No, I did not.

19 Q. You didn't see anything like that. Right?

20 A. No.

21 Q. You didn't see the person in blue do anything to  
22 indicate that they were getting something or that they were  
23 purchasing something and they wanted to know what it was.  
24 Right?

25 A. Are you indicating as far as him looking into the

1 bag after the receipt?

2 Q. No looking into the bag. Right?

3 A. Say again.

4 Q. There was no looking into the bag?

5 A. Correct.

6 Q. There was no feeling of the bag?

7 A. Correct.

8 Q. And there was no other interactions between these  
9 two people other than the handing over of the bag and some  
10 sort of handshake.

11 A. Correct.

12 Q. And that handshake you think had included some  
13 sort of light-colored material in the exchange.

14 A. Correct.

15 Q. You said "object" today. I just want to be clear.  
16 You are not saying you could tell it was paper.

17 A. That's correct.

18 Q. You mentioned the words "probable cause" on  
19 direct. Right?

20 A. Correct.

21 Q. And probable cause is probable cause to arrest  
22 somebody. Right?

23 MR. WASSERMAN: Objection.

24 THE COURT: What is the question?

25 MR. OHM: When you say it is probable cause to

1 arrest somebody.

2 THE COURT: What is the reason for this question?

3 MR. OHM: I want to go to the importance of money  
4 in the assessment that the officers would have.

5 THE COURT: I'll allow the question, Mr. Ohm.

6 **BY MR. OHM:**

7 Q. Probable cause to arrest is what you are referring  
8 to. Right?

9 A. Yes.

10 Q. When you have an exchange of money, that is  
11 exactly what you are looking for. Right?

12 A. Say again.

13 Q. When you are observing an exchange of an object  
14 for money, that is what you are looking for. Right?

15 A. Correct.

16 Q. And especially if they are acting in other ways  
17 like going to a stash location, that would indicate to you  
18 that it was contraband. Right?

19 A. Correct.

20 Q. If I gave Mr. Marston a bag and I shook his hand,  
21 that wouldn't be illegal?

22 A. Wouldn't be what?

23 Q. That wouldn't be illegal. Right?

24 MR. WASSERMAN: Objection. Relevance.

25 THE COURT: Sustained.

1 BY MR. OHM:

2 Q. Okay. So you had testified both on direct on Mr.  
3 Marston's questions that you believed that the individual in  
4 gray jumped the fence. Right?

5 A. He could have. I didn't see that part.

6 Q. Okay. So you don't know one way or another?

7 A. I cannot testify to you that he hopped the fence.

8 Q. Okay. Because you weren't focusing on him at that  
9 point in time or because he wasn't in your line of sight?

10 A. Which defendant?

11 Q. The grey.

12 A. That's correct. I wasn't focusing on that part.  
13 I was trying to get my lookout out and get the arrest team  
14 members to get them stopped.

15 Q. Was he in your line of sight?

16 A. Which part?

17 Q. The part -- so you saw him on the other side of  
18 the fence at one point?

19 A. Right. In my sight.

20 Q. Later on you say you saw him on the other side of  
21 the fence?

22 A. Yes. At some point he was in my line of sight in  
23 the walkway.

24 Q. Did you lose sight of him though between those two  
25 times or is it just that you can't remember whether you saw

1 him jump the fence?

2 **A.** I just cannot remember.

3 **Q.** So you didn't lose sight?

4 **A.** I can't say that I lost sight. I am not trying to  
5 be difficult. I just can't remember that part.

6 **Q.** Sure. But you are watching this transaction,  
7 Right, and as a drug undercover, you are looking at both the  
8 buyer and the seller all of the time. Right?

9 **A.** Correct.

10 **Q.** You are not just focusing on one individual.  
11 Right?

12 **A.** Correct.

13 **Q.** And so you see the buyer and you are saying you  
14 are focused on him and the guy in the gray is the seller in  
15 your perspective, then are you continuing to watch both the  
16 blue and the gray, the buyer and the seller?

17 **A.** Trying to, yes.

18 **Q.** When you say that you don't know if he jumped the  
19 fence or not, are you saying that you lost sight of the guy  
20 in gray or are you saying you just don't remember?

21 **A.** I am telling you, I just don't remember.

22 **Q.** Okay. You don't know if you lost sight of him or  
23 not?

24 MR. WASSERMAN: Objection. Asked and answered.

25 THE COURT: Yes. Sustained.

1 BY MR. OHM:

2 Q. Then you watch -- at one point do you decide to  
3 leave to drive around to Montana?

4 A. I think when I saw sufficient arresting members in  
5 the block, I just drove off because I wanted to make sure  
6 that they had Mr. Douglas stopped. At some point they did  
7 indicate that they had him stopped, and I wanted to come  
8 around just to make sure of that.

9 Q. Okay. And did you see Mr. Douglas get stopped?

10 A. Getting stopped or was he already stopped?

11 Q. Did you see him stopped?

12 A. I saw him stopped.

13 Q. But you didn't see him getting stopped?

14 A. I did not see him getting stopped.

15 Q. And you said you didn't see Mr. Williams getting  
16 stopped?

17 A. That's correct.

18 Q. But you saw the officers move in upon your  
19 command?

20 A. Correct.

21 Q. And after that point, when you saw enough officers  
22 move in, that's when you decided to go?

23 A. I am not trying to be difficult. It's just the  
24 officers moving in was not my factor to leave.

25 Q. I thought you just said you wanted to make sure



1 that Mr. Douglas was stopped and so you waited for all of --  
2 enough officers to move in and that's when you left.

3 A. Correct. I just left.

4 Q. Okay. So it seemed like the main factor in your  
5 decision to leave was after you were making sure that there  
6 were enough officers where you were confident that Mr.  
7 Douglas was stopped.

8 A. Ask that again.

9 Q. It sounds like you were waiting to leave until  
10 after you were sure there were enough officers moving in so  
11 you could be confident that Mr. Douglas would be stopped?

12 A. Correct.

13 Q. Okay.

14 So you didn't leave though until a bunch of  
15 officers came in is what I am trying to say?

16 A. Correct.

17 Q. Okay. I wanted to -- if we could go to --

18 MR. OHM: I will mark this as Defense Douglas' 2,  
19 Government's Exhibit 5, the Andrew Stout camera that you  
20 previously identified.

21 CLERK: Mr. Ohm, is this on your laptop?

22 **BY MR. OHM:**

23 Q. Okay. So this is the footage you watched earlier  
24 on direct examination, from Officer Stout. Right?

25 A. Correct.

1 Q. Here you see the individuals in the walkway.

2 Right?

3 A. Correct.

4 Q. I am at 2:16 now. Going back to 2:18. Here you  
5 see different members of the arrest team moving in.

6 A. Correct.

7 Q. So at 2:19 on the right hand of the exhibit you  
8 see one officer. Right?

9 A. Yes.

10 Q. And then you see a -- is that a police car, the  
11 silver car --

12 A. Yes.

13 Q. -- at 2:19 in the middle of the exhibit and there  
14 is a second officer there. Correct?

15 A. Right.

16 Q. Here at 2:21 is a third officer. Right?

17 THE COURT: Let's be clear that when you are  
18 talking about 2:19 and 2:21, you are talking about the time  
19 in the file, not the time posted in the upper right-hand  
20 corner.

21 MR. OHM: Yes, Your Honor. I apologize. Is it  
22 better for the record if I switch to the upper right-hand  
23 corner?

24 THE COURT: That's probably the clearest way to  
25 proceed.

1 MR. OHM: Okay.

2 BY MR. OHM:

3 Q. I am at 19:02:42 is the time in the upper  
4 right-hand corner.

5 (Played video.)

6 Okay. So at 19:02:49 you see the two officers and  
7 the one unmarked police car. Right?

8 A. Yes, sir.

9 Q. Are there any other police cars here?

10 A. So far I just see one.

11 Q. Okay. At 19:02:51 is when another officer  
12 arrives. Correct?

13 A. That's correct.

14 Q. And Officer Stout is in uniform also. Is that  
15 fair?

16 A. Yes.

17 Q. Is that one of the officers that we see in  
18 19:03:03? Is that one we already saw or a different one?

19 A. I believe it is one we already saw.

20 Q. Is this Mr. Williams on the left-hand side of the  
21 exhibit at 19:03:03?

22 A. Yes.

23 Q. He is in full view of the officers. Correct?

24 A. Of the officers, yes.

25 (Played video.)

1 Q. If you look in the background, did you see the  
2 squad car drive by in 19:03:03?

3 A. Yes.

4 Q. You see your car behind it. Right?

5 A. Right. Right next to it.

6 Q. It's fair to say that Mr. Williams was in the  
7 presence of officers at the time that you left.

8 A. I couldn't see that far. I couldn't see those  
9 officers walking past Mr. Williams.

10 Q. Okay. Well, it's fair to say that the officers  
11 walked by Mr. Williams while you were still there.

12 A. Yes.

13 Q. Okay. And after the exchange, how much longer did  
14 you see the two individuals?

15 A. Um, maybe -- after the exchange. Right?

16 Q. Yeah.

17 A. No more than a minute, maybe 20 to 30 seconds.

18 Q. And in those 20 to 30 seconds, they didn't  
19 separate. Right?

20 A. At the time I saw them. Correct.

21 Q. They stayed together.

22 A. Yes, at the time I saw them.

23 Q. Which is different than you often see with a  
24 buyer/seller situation. Right?

25 A. Correct.

1           **Q.**    I just wanted to clarify one point. Did the  
2           exchange, the hand-to-hand transfer of the light-colored  
3           object, did that happen before or after the backpack was  
4           given?

5           **A.**    After.

6           **Q.**    Okay. And did it happen before or after the  
7           backpack was put on?

8           **A.**    It was before the backpack was put on.

9           **Q.**    Okay. So you are saying that the backpack is  
10          handed over, the jacket is taken off and then the money is  
11          exchanged and then the backpack is put on?

12          **A.**    No.

13          **Q.**    Why don't you break it down.

14          **A.**    The backpack is given, the exchange, and then the  
15          taking off of the jacket and putting it back on.

16          **Q.**    So the backpack is given, the money is given and  
17          then the exchange?

18          **A.**    Yes.

19          **Q.**    Okay. And was it almost like right after is when  
20          the backpack was given and the money -- or not the money,  
21          when the light-colored object was given?

22          **A.**    Correct.

23          **Q.**    Is it simultaneous or is it --

24          **A.**    Which part was simultaneous?

25          **Q.**    The backpack and then the hand-to-hand where the

1 light-colored object was given?

2 A. It was quick like that so simultaneously, yeah.

3 The backpack was given, hand-to-hand and then the jacket --

4 Q. The next instant the hand-to-hand?

5 A. Yes.

6 Q. And this is the part where the man in blue is --

7 his back is facing you. Right?

8 A. That's correct.

9 Q. And I think you had said that the man in gray was  
10 sort of -- well, I will just ask you. Where was the man in  
11 gray?

12 A. The man in gray, I could see the left portion of  
13 his body. I could see more dominant -- I could see. Keep  
14 going. Right there -- that portion of the body.

15 Q. So a little bit of the front but not the whole  
16 right side?

17 A. Yeah.

18 Q. You had testified that the fifth district has the  
19 most drug use; is that what you said?

20 A. No, sir.

21 Q. What did you say?

22 A. I was asked if I had observed and I am just trying  
23 to think if drug sales took place more than usual in first  
24 district, second district, third district and fourth  
25 district. And I said I observed more drug sales taking

1 place in the fifth district versus those other four  
2 districts.

3 Q. I see. How often -- in the last five years or so,  
4 how often did you work in the first district?

5 A. The first district?

6 Q. Yeah.

7 A. Do you want a rough number?

8 Q. Sure.

9 A. I would say maybe close to 100.

10 Q. And what about the second district?

11 A. The second district I can think of offhand no more  
12 than five.

13 Q. So less than five times?

14 A. Let me double check. Let me think. I am basing  
15 this off of some investigations and drug complaints that we  
16 had. No more than 10.

17 Q. What about the third district?

18 A. The third district we have been there quite  
19 frequently as well. I would say maybe about 100 times.

20 Q. What about the fourth district?

21 A. The fourth district probably the same, close to  
22 100.

23 Q. What about the fifth district?

24 A. The fifth?

25 Q. Yeah.

1           **A.**    Um, more than those districts I just described.  
2           It's hard to give you an accurate number.

3           **Q.**    A couple hundred?

4           **A.**    Yeah, a couple hundred.

5           MR. WASSERMAN: I'm sorry. I didn't catch the  
6           question.

7           MR. OHM: A couple hundred?

8           MR. WASSERMAN: What was the question before that?

9           MR. OHM: How many times from the fifth district?

10          MR. WASSERMAN: Okay.

11         **BY MR. OHM:**

12           **Q.**    To be clear because I wasn't sure you are saying  
13           your understanding of where drugs are sold the most is based  
14           upon your observations and experience as an undercover  
15           officer. Right?

16           **A.**    And drug complaints.

17           **Q.**    Drug complaints.

18           **A.**    Yes.

19           **Q.**    Okay. Okay.

20                    You had testified that at the time of the exchange  
21           that there may have been other individuals who were around  
22           the person in the blue and the person in orange?

23           **A.**    Correct.

24           **Q.**    How many?

25           **A.**    I can remember maybe two walking.



1 Q. So there were two other people right there?

2 A. Possibly. I can't actually say that it was two  
3 but possibly.

4 Q. When you say you can't say it was two, do you mean  
5 it could be more or it could be less or it could be zero?

6 A. It's definitely not zero. It could be more or  
7 less. I just can't give you an exact number.

8 Q. Okay. And what was the gender of those other  
9 people?

10 A. Males.

11 Q. They were males?

12 A. At the time, yes. I didn't mean to cut you off.  
13 Are you asking at the time of the exchange or between the  
14 time I was there for 10 or 15 minutes.

15 Q. At the time of the exchange.

16 A. At the time of the exchange, I would say maybe one  
17 or two and those are males.

18 Q. And could you tell us what -- the first person  
19 that you remember, what did that person look like?

20 A. I don't remember.

21 Q. What was the race of that person?

22 A. Black male.

23 Q. Any idea what their clothing was?

24 A. I do not.

25 Q. Tall? Short?

1           **A.**    I can't tell.

2           **Q.**    Heavy or skinny?

3           **A.**    I cannot testify to that.

4           **Q.**    Okay. With the same -- so there's a second male  
5 that you may or may not have seen?

6           **A.**    Yes. And I'm only basing it off of what I saw  
7 earlier from the individual with the black coat and fur on  
8 it. I can't even tell you -- that refreshed my recollection  
9 at the time of seeing the video. So I can't tell you --  
10 what I am trying to say is I can't --

11          **Q.**    Okay. In terms of your refreshed recollection  
12 about the person with the black coat and fur, what did you  
13 see that person doing?

14          **A.**    I cannot tell you that. I can only reflect my  
15 recollection that I saw that individual. I cannot remember  
16 specific details.

17          **Q.**    Okay. But there was something that was triggered  
18 in your memory that made you think that person was part of  
19 the group?

20          **A.**    He could have been out there, yes.

21          **Q.**    Okay. How many people were out there? Were there  
22 a lot?

23          **A.**    In the walkway or just in --

24          **Q.**    The whole complex.

25          **A.**    There were --

1 MR. WASSERMAN: Objection. Relevance. The whole  
2 complex?

3 MR. OHM: That part he can see.

4 THE COURT: Rephrase the question.

5 **BY MR. OHM:**

6 **Q.** How many people did you see out there?

7 **A.** I can only testify to the group of individuals  
8 that were to the right of me, which was right by the  
9 recreational center, and the ones I just previously brought  
10 up, maybe two to three individuals, one or two individuals.  
11 So this group on the right side of me by the recreational  
12 center, I would say maybe six to eight.

13 **Q.** Okay. And did you see all of those individuals  
14 interacting with each other?

15 **A.** They were just standing around each other and just  
16 interacting amongst each other.

17 **Q.** And are you saying with certainty that nobody else  
18 interacted with the person in gray?

19 **A.** Which?

20 **Q.** Did you see anyone else interact with the person  
21 in gray, come to arms length with the person in gray?

22 **A.** During the exchange or just in general?

23 **Q.** In general.

24 **A.** I can't say for certain.

25 **Q.** Okay. How about during the exchange?

1           **A.**   Ask the question again.

2           **Q.**   During the exchange, did you see anybody else  
3 within arm's length of the person in gray?

4           **A.**   No. I'm sorry.

5           **Q.**   During the exchange did you any person within  
6 arm's length of the person in blue?

7           **A.**   No. The only person I saw was the individual in  
8 gray and the individual in blue within arm's length of each  
9 other.

10          **Q.**   Where was the third person?

11          **A.**   I cannot tell you that.

12          **Q.**   You just know a person was there?

13          **A.**   I just know a person was there.

14          **Q.**   Okay. Oh, why didn't you have binoculars?

15          **A.**   For one, I was in the undercover vehicle, which  
16 does not have tinted windows. I was within some feet from a  
17 group of individuals where we were watching not only those  
18 but individuals -- so I cannot -- I am trying to blend in as  
19 an undercover officer. So I cannot keep putting up  
20 binoculars. It would be very obvious that I am undercover.

21          **Q.**   Do you typically not use binoculars?

22          **A.**   I typically don't.

23          **Q.**   Okay. And then -- oh, there were some questions  
24 about training. I just want to clarify some things. You  
25 said you had training in the academy, on-the-job training,

1 and I think you said you had something twice a year?

2 **A.** Yes, PDT, which I cannot think what the acronym  
3 is. Training done at the academy. It is a refresher  
4 course. We go over certain subjects, refresh our training  
5 on certain things like firearms.

6 **Q.** Is it something that all of the officers do?

7 **A.** Yes.

8 **Q.** Okay. So in terms of specialized training as an  
9 undercover narcotics officer, what kind of training do you  
10 have?

11 **A.** On a yearly basis, nothing as far as on a yearly  
12 basis for drug op. The only other thing is probably just  
13 search warrant training.

14 **Q.** So when is the last time you had undercover  
15 narcotics training?

16 **A.** Um, I would say maybe 10 years ago.

17 **Q.** Okay.

18 MR. OHM: Your Honor, that is all I have.

19 THE COURT: Mr. Wasserman, would you wish to do  
20 redirect?

21 MR. WASSERMAN: We do, Your Honor.

22 **REDIRECT EXAMINATION**

23 **BY MR. WASSERMAN:**

24 **Q.** Good afternoon, Officer Jackson.

25 **A.** Good afternoon.

1           **Q.**    You were asked about the hand-to-hand exchange  
2           that you observed. And specifically related to the object  
3           that Mr. Douglas handed Mr. Williams, what did you believe  
4           that to be at the time?

5           **A.**    U.S. currency.

6           **Q.**    And in your training and experience, is that the  
7           only thing of value that might ever be transferred between  
8           two people that might be for contraband? Is there ever  
9           transfer of drugs for firearms, in your experience?

10          **A.**    Not in my experience. I am not saying that it  
11          can't happen but in my experience, U.S. currency will be  
12          more often used.

13          **Q.**    I'm sorry. What?

14          **A.**    In my experience, U.S. currency will be more often  
15          used.

16          **Q.**    And based upon your observations, is that what you  
17          believe you were seeing?

18          **A.**    Yes.

19          **Q.**    Okay. With respect to your observations of the  
20          actual exchange of the backpack, you were shown a map --  
21          excuse me, a photograph that showed where your vehicle was  
22          in relation to other vehicles. Do you recall seeing that?

23          **A.**    Yes.

24          **Q.**    All right. Was there anything -- any of those  
25          things, cars, trees, bushes, that obstructed your view of

1 the exchange between Mr. Williams and Mr. Douglas?

2 **A.** No.

3 **Q.** You were -- I want to ask you a little bit about  
4 the radio run and just to make sure that we are clear on the  
5 course of your description. So if I can, and just to be  
6 clear, Mr. Marston said a certain amount of time passed when  
7 you first gave the lookout and when you mentioned the orange  
8 hood. Do you recall that?

9 **A.** Yes.

10 **Q.** All right. So if I can go ahead and play  
11 Government's Exhibit No. 3, at the 6 minute mark, it is  
12 6:29.

13 THE COURT: Before you play that, does this audio  
14 file have a time stamp associated with the time of day?

15 MR. WASSERMAN: No, it doesn't. Since it's a -- I  
16 don't know if we can call it a tack channel, it doesn't have  
17 a dispatch, sometimes it will give a timing stamp or marker  
18 on the transmissions.

19 THE COURT: Okay.

20 MR. WASSERMAN: If you can play from the  
21 six-minute marker.

22 (Played video.)

23 **BY MR. WASSERMAN:**

24 **Q.** Officer Jackson, was that your initial lookout?

25 **A.** Yes.

1           **Q.**    So primarily focused on the individual in the blue  
2 coat?

3           **A.**    Yes.

4           **Q.**    And why were you particularly focused on the  
5 individual in the blue coat at that point?

6           **A.**    Because I knew he was in possession of the book  
7 bag.

8           **Q.**    All right. And what did you -- is that -- is the  
9 book bag what you suspected may have contained contraband?

10          **A.**    Yes.

11          **Q.**    I am going to go ahead and ask you to play from  
12 6:29 to 7:08 of Exhibit 3.

13                   (Played audio.)

14                   Officer Jackson, was that the second part of your  
15 lookout?

16          **A.**    Yes.

17          **Q.**    The next transmission you made that had a lookout?

18          **A.**    Yes.

19          **Q.**    All right. And in that lookout, did you  
20 supplement your description of what was later identified as  
21 Mr. Williams with puffy hair or puffy or messy hair?

22          **A.**    Yes.

23          **Q.**    And since we started about the six-minute mark and  
24 that transmission ended about 7:08, is it about a minute or  
25 so from the first -- from the time you first gave -- started



1 to give the first lookout?

2 **A.** Yes.

3 **Q.** Now, I am going to ask to play from 7:28 of the  
4 recording to 7:39, Exhibit 3.

5 (Played audio.)

6 So is this the third transmission you had that  
7 included the lookout for the two individuals?

8 **A.** Yes.

9 **Q.** And in this particular transmission, is this the  
10 first point in which you mentioned the orange hood as it  
11 related to Mr. Williams?

12 **A.** Correct.

13 **Q.** All right. That was approximately about a minute  
14 and a half after you started the initial lookout.

15 **A.** Correct.

16 **Q.** Is that right?

17 **A.** Yes.

18 **Q.** All right. So for timing, based upon you are  
19 listening to the recording, was it about a minute and a  
20 half, a minute and a half that it took you to add the  
21 additional descriptive information as it related to Mr.  
22 Williams?

23 **A.** Correct.

24 **Q.** You talked a little bit about or have been asked  
25 about some of the other people that you saw in the immediate

1 vicinity of the walkway. Did any of the individuals that  
2 you saw in the area match the description or have a similar  
3 description as to Mr. Douglas or Mr. Williams?

4 **A.** No.

5 **Q.** With respect to -- I want to ask you a little bit  
6 about some of the questions that Mr. Ohm asked you. You  
7 indicated that there might have been four or five undercover  
8 officers working that day in this operation. Do you recall  
9 that?

10 **A.** Yes.

11 **Q.** All right. And is everybody working in the same  
12 area or were those other undercovers located in other parts  
13 of 5D, if you know?

14 **A.** I am basing this off of some transmission that  
15 took place, but we were all in the same area, but not  
16 directly with each other. I would say a couple undercover  
17 officers were some blocks away and pretty much scattered  
18 amongst this neighborhood.

19 **Q.** And you indicated there may have been about 10 to  
20 15 uniformed officers that were assigned to the arrest team?

21 **A.** Correct.

22 **Q.** All right. And were those people, those uniformed  
23 officers sort of assigned to respond to anything that might  
24 have been called out as far as the lookout from any one of  
25 the undercover officers, the four or five that were working

1 that day?

2 A. Yes, sir.

3 Q. So they weren't -- the 10 to 15 officers were not  
4 specifically assigned to you.

5 A. Correct.

6 Q. With respect to your observations of the exchange,  
7 you talked about your experience and your understanding of  
8 the frequency of criminal activity not only in 5D but in  
9 that particular location of the walkway and the rec center.  
10 Do you recall that?

11 A. Yes.

12 Q. Does that experience, and your understanding of  
13 that area, factor into your assessment of whether what you  
14 are observing, what you observed with respect to Mr. Douglas  
15 and Mr. Williams was suspicious?

16 A. Can you repeat that?

17 Q. I'm sorry. It was not a well-worded question.  
18 Your understanding of that area as an area with more  
19 frequent criminal activity, I think you said drugs,  
20 robberies, did that factor into your assessment that what  
21 you were observing between these two people was suspicious?

22 A. Yes.

23 Q. You were also asked about your show-up ID, as  
24 Mr. Marston termed it, and when you did the identification  
25 procedure in relation to where both defendants were located.

1 Just to clarify, were you able to clearly see both  
2 individuals without anything obstructing your view?

3 A. Yes, I did.

4 Q. Had something been obstructing your view, would  
5 you have moved into a position in order to be able to see  
6 them clearly?

7 A. Yes. Not only that, I would indicate to arrest  
8 team, radio to bring them further towards this way or that  
9 direction, like I have done in the past.

10 Q. All right. And I think you've indicated there are  
11 times where the arrest team has stopped somebody that turned  
12 out to not be the person that you observed?

13 A. Correct.

14 Q. So do you have no problem telling the arrest team  
15 they have the wrong guy?

16 A. No problem at all.

17 Q. And, again, just so we are clear, was there  
18 anybody else that you observed in that area that sort of  
19 matched the description or had similar description in terms  
20 of clothing and appearance as Mr. Williams and Mr. Douglas?

21 A. No.

22 Q. I just have one other question. You indicated  
23 that after you saw this exchange between Mr. Douglas and Mr.  
24 Williams, they sort of both walked off at some point towards  
25 the parking lot. Do you recall saying that?

1           **A.**    Yes, sir.

2           **Q.**    Did you have any idea at that time whether they  
3           were going to be remaining together or separate?

4           **A.**    I did not have any idea. All I know is they just  
5           walked out of my sight towards that parking lot.

6           MR. WASSERMAN: That's all I have.

7           THE COURT: Thank you.

8           Officer Jackson, I don't have any questions for  
9           you. Thank you for your time today.

10          THE WITNESS: Leave the microphone here?

11          THE COURT: I think so, yes. You are excused.  
12          Are you ready to call your next witness?

13          MR. WASSERMAN: Yes. The Government calls Officer  
14          Poupart.

15          THE COURT: Officer, hold on for one second.

16          MR. WASSERMAN: I was going to give him a wipe.

17          THE COURT: If you want to wipe that down.

18          CLERK: Please raise your right hand. Do you  
19          solemnly swear that the testimony you shall give the Court  
20          today will be the truth, the whole truth, and nothing but  
21          the truth?

22          THE WITNESS: I do.

23          CLERK: Please be seated.

24          THE COURT: Officer Poupart, you are obviously  
25          wearing a mask. You have the option to put on a face shield

1 if you want to take off the mask and have the face shield.  
2 What the prior witness found was that that face shield  
3 fogged up to some extent. So while you can speak more  
4 easily with it, you may not be able to see as well. It's  
5 your choice. We put that microphone over there to make it  
6 easier to hear a witness with a mask on. If you want to  
7 start that way and see how it goes, that's fine with us or  
8 if you prefer to do a face shield, we have some available.

9 THE WITNESS: I will start like this. Thank you.

10 THE COURT: Okay. We will try that.

11 **DIRECT EXAMINATION**

12 **BY MR. WASSERMAN:**

13 Q. Good afternoon. Can you introduce yourself to the  
14 Court and spell your first and last name for the court  
15 reporter, please?

16 A. My name is Officer Maxwell Poupart, M-a-x-w-e-l-l,  
17 P-o-u-p-a-r-t.

18 Q. Where are you currently employed?

19 A. The Metropolitan Police Department.

20 Q. What is your position with the MPD?

21 A. Officer.

22 Q. How long have you worked with MPD as a police  
23 officer?

24 A. Close to five years.

25 Q. What is your current assignment?

1           **A.**    I am an officer of the third district.

2           **Q.**    Any specific role in 3D?

3           **A.**    I am on the crimes suppression team.

4           **Q.**    What do you do with the crime suppression team?

5           **A.**    It's a special missions unit. We focus on violent  
6 crime in the district, firearms, occasionally prostitution.

7           **Q.**    Where were you assigned on April 22nd of 2020?

8           **A.**    NSID, the narcotics enforcement unit.

9           **Q.**    When were you first assigned to NSID?

10          **A.**    I don't know the exact date. It was the end of  
11 January or the beginning of February of this year.

12          **Q.**    And how long were you in NSID -- well, before you  
13 went to 3D?

14          **A.**    Approximately five months. I went back to 3D in  
15 June of this year.

16          **Q.**    Okay. Was that a temporary detail you were doing  
17 in NSID?

18          **A.**    Yes.

19          **Q.**    Okay. And prior to your assignment with NSID, I  
20 guess in late January, where were you assigned?

21          **A.**    Prior to NSID I was assigned third district in the  
22 same position I am in now.

23          **Q.**    Okay. What were your duties? What was your  
24 assignment when you were with NSID?

25          **A.**    i was assigned to the narcotics enforcement unit.

1 We would handle drug complaints that came in from citizens,  
2 residents, as well as narcotics-related operations, buy/bust  
3 operations.

4 Q. And, specifically, your role in those  
5 investigations?

6 A. I was a member of the arrest team.

7 Q. All right. As part of your training and  
8 experience as a police officer, have you received any  
9 firearms training?

10 A. Yes.

11 Q. And have you been involved in investigations where  
12 firearms were seized?

13 A. Yes.

14 Q. And prior to April 22nd of 2020, have you been  
15 involved in investigations where either you seized a firearm  
16 or officers you were with seized firearms?

17 A. Yes.

18 Q. How many times do you think you participated in  
19 investigations where firearms were seized?

20 A. I don't know the exact number. Approximately 20,  
21 maybe more.

22 Q. Based upon your training and experience, are you  
23 familiar with the size, shape, weight and other  
24 characteristics of most handguns?

25 A. Yes.



1 Q. Based upon your training and experience, are you  
2 able to recognize what a handgun feels like without  
3 necessarily being able to see it?

4 A. Yes.

5 Q. I want to direct your attention to the afternoon  
6 of April 22nd of 2020, were you on duty that afternoon?

7 A. Yes.

8 Q. And do you recall what your assignment was that  
9 day?

10 A. Arrest unit.

11 Q. Was that with NSID?

12 A. Yes.

13 Q. And do you know what -- why you all were out there  
14 that day? Was there a particular operation or --

15 A. We were conducting operations in that district.

16 Q. I'm sorry?

17 A. We were conducting operations in the fifth  
18 district.

19 Q. All right. And was there anything in particular  
20 that the operations focused on? Narcotics? Firearms?

21 A. We were -- I believe we were focused on narcotics  
22 complaints in the area.

23 Q. Okay. How were you dressed that day?

24 A. Full police uniform.

25 Q. And were you on foot or in a vehicle?

1           **A.**    I was in a vehicle.

2           **Q.**    Was that vehicle marked or unmarked?

3           **A.**    Unmarked.

4           **Q.**    Were you with any other officers that day?

5           **A.**    Yes.

6           **Q.**    Who was that?

7           **A.**    Officer Taylor.

8           **Q.**    All right. Any other officer other than Officer  
9 Taylor?

10          **A.**    No.

11          **Q.**    Were you involved in an investigation on that date  
12 that resulted in the seizure of a firearm in the area of the  
13 2300 block of 15th Street in northeast Washington, DC?

14          **A.**    Yes.

15          **Q.**    Prior to April 22nd of 2020, were you familiar  
16 with the area of the 2300 block of 15th Street?

17          **A.**    I haven't particularly worked over there since I  
18 was assigned to the 3rd district.

19          **Q.**    Okay. Did you have experience -- have you worked  
20 there before or are you not famniliar with that area?

21          **A.**    Well, my unit has executed search warrants in  
22 other parts of the city other than the third district. We  
23 have been in other districts. But not to my recollection  
24 being in that block.

25          **Q.**    All right. Did there come a point on April 22nd

1 of 2020 when you received a radio transmission to respond to  
2 that block?

3 **A.** Yes.

4 **Q.** And do you recall generally what the radio  
5 transmission requested?

6 **A.** It was another officer from observation post  
7 requesting for units to move in and make a stop.

8 **Q.** Of anybody in particular?

9 **A.** Yeah, two described individuals.

10 **Q.** All right. And prior to your testimony today,  
11 have you had an opportunity to review the radio transmission  
12 from that particular incident?

13 **A.** Yes.

14 **Q.** All right. I want to play you Government's  
15 Exhibit No. 3 from 6 minute mark to about 6:29.

16 (Played audio.)

17 Do you recognize the voice on that radio  
18 transmission?

19 **A.** Yes.

20 **Q.** Who is that?

21 **A.** That is Officer Jackson.

22 **Q.** And do you know what Officer Jackson was doing  
23 that day in terms of his assignment?

24 **A.** Yes, he was an undercover officer.

25 **Q.** Was that the radio transmission that you responded

1 to that day?

2 A. Yes.

3 Q. To your knowledge, were you and Officer Taylor the  
4 first officers on the scene?

5 A. Yes.

6 Q. And have you had, prior to today, an opportunity  
7 to review your body worn camera footage from that day?

8 A. Yes.

9 Q. All right. I am going to play you Government's  
10 No. 4 from 19:02:25 time stamp to about 19:02:50.

11 (Played audio.)

12 All right. Officer Poupart, did you recognize  
13 that portion of the video?

14 A. Yes.

15 Q. All right. Can you tell us why you approached the  
16 individual in the blue jacket?

17 A. That was the description given by the undercover  
18 officer.

19 Q. And do you see the individual in the blue jacket  
20 that you interacted with anywhere in the courtroom today?

21 A. Yes.

22 Q. All right. Can you please identify that  
23 individual by describing where he is sitting and an article  
24 of clothing he is wearing?

25 A. Sitting to my left in orange.

1 THE COURT: And, again, because we are wearing  
2 masks, I would ask the defendant to take off his mask if you  
3 can confirm --

4 MR. WASSERMAN: Is that the person you interacted  
5 with there in the blue coat that is on Government's Exhibit  
6 4?

7 THE WITNESS: Yeah.

8 MR. WASSERMAN: Your Honor, I ask the record  
9 reflect of the in-court identification of Mr. Douglas.

10 THE COURT: The record so reflects.

11 **BY MR. WASSERMAN:**

12 Q. Okay. During your interaction with Mr. Douglas,  
13 did either you or your partner draw your weapons at any  
14 point during that interaction?

15 A. No.

16 Q. Were you or your partner yelling at or threatening  
17 Mr. Douglas at any point during that interaction?

18 A. No.

19 Q. I am going to show you what has been admitted into  
20 evidence as Government's Exhibit 4-A. Do you recognize that  
21 still shot, Exhibit 4-A?

22 A. Yes.

23 Q. Is that from your body worn camera?

24 A. Yeah.

25 Q. Other than Mr. Douglas, can you see anyone

1 standing near Mr. Douglas?

2 A. Yes.

3 Q. Do you recognize either one of those individuals?

4 A. Yes.

5 Q. Which one do you recognize?

6 A. The individual on the right.

7 Q. All right. Who is that?

8 A. Mr. Williams.

9 Q. As you approached Mr. Douglas, did you know  
10 whether or not at the time these two other individuals, the  
11 one you referred to as Mr. Williams and the other individual  
12 in the black coat to Mr. Williams' left, did you know  
13 whether or not these other two individuals had any  
14 involvement in the transaction observed by the OP? The  
15 observation post.

16 A. I essentially focused on Mr. Douglas.

17 Q. Why did you lead Mr. Douglas away from these two  
18 other individuals?

19 A. In my experience it is safer for everyone on the  
20 scene to pull the stop away from a group of people.

21 Q. All right. And why would safety be of concern to  
22 you under these circumstances?

23 A. Well, officer safety is always paramount but at  
24 the time my partner and I arrived, we were the only officers  
25 on scene. There are two of us and three other individuals

1 standing there and it is a housing complex with the  
2 possibility of more people coming outside.

3 Q. Why did you place Mr. Douglas in handcuffs after  
4 you brought him aside?

5 A. Officer safety.

6 Q. When you say "officer safety" were you aware of  
7 what, based on the lookout, the observation post officer had  
8 observed?

9 A. Yes.

10 Q. Can you estimate approximately how much time  
11 elapsed between the time you first heard the lookout and  
12 when you encountered Mr. Douglas?

13 A. Maybe a minute and a half, around that.

14 Q. All right. I am going to play you Government's  
15 Exhibit No. 4 from 19:02:50 to 19:03:10. I want to ask you  
16 one additional question first. Based upon -- have you been  
17 involved in narcotics investigations previously?

18 A. Yes.

19 Q. And how common in your training and experience is  
20 it for individuals engaged in narcotics trafficking to  
21 possess firearms?

22 A. It's common.

23 Q. Common. And at the time that you placed Mr.  
24 Douglas in handcuffs, you indicated that you were concerned  
25 about officer safety. What specifically were you concerned

1 about other than -- I think you mentioned a couple other  
2 individuals there.

3 **A.** In narcotics investigations, it is common for one  
4 or many subjects in the area to be armed. So if someone has  
5 been identified as part of an alleged illegal transaction,  
6 we stop the individual for officer's safety. We put them in  
7 handcuffs because we don't know at that moment what their  
8 capability is of harming us or someone else.

9 **Q.** All right. Is it fair to say that you didn't know  
10 whether Mr. Douglas was armed or not at the time that you  
11 approached him?

12 **A.** Correct.

13 **Q.** All right. Go ahead and play Exhibit 4.  
14 (Played audio.)

15 Can you describe for us in looking at Exhibit 4,  
16 that clip, what you were doing?

17 **A.** I had noticed a bulge under the defendant's  
18 jacket, which was a backpack that was seen put on under his  
19 jacket, so I frisked him.

20 **Q.** And is that why you were sort of feeling the rear  
21 area of Mr. Douglas' jacket?

22 **A.** Correct.

23 **Q.** Were you able to detect whether there was anything  
24 in the area of the jacket that you were, you know, feeling  
25 or --



1           **A.**    Yeah.

2           **Q.**    What, if anything, were you able to detect as a  
3 result of the external frisk?

4           **A.**    I thought I recognized what was a firearm.

5           **Q.**    Can you describe what specifically you felt that  
6 made you recognize what you believed was a firearm?

7           **A.**    Both the shape, weight of the object, the length  
8 and the grip, or some people call it the handle, of the  
9 firearm sticking up.

10          **Q.**    Okay. So just to break that down a little bit,  
11 was the item that you were feeling in Exhibit 4, was it a  
12 hard object or a soft object?

13          **A.**    Yes, it was a hard object.

14          **Q.**    And you mentioned that you recongnized what you  
15 thought was the butt or handle of the firearm; is that  
16 right?

17          **A.**    Correct.

18          **Q.**    What direction, if you can -- from Exhibit 4, how  
19 did it feel to you that that item was positioned in the bag?

20          **A.**    It was positioned so that the grip was sticking  
21 upwards towards the sky to the left-hand side of the bag.

22          **Q.**    All right. So I am going to step over to the TV  
23 screen. Tell me if I am correct. Did you feel the butt of  
24 the gun, the handle of the gun, going up in this direction?

25          **A.**    Correct.

1           **Q.**   And I am pointing up towards the top of the screen  
2           of the TV. And then what other portion of what you believed  
3           was a firearm did you say you recognized other than the  
4           butt?

5           **A.**   The slide.

6           **Q.**   Which direction was that going?

7           **A.**   Horizontal.

8           **Q.**   Which way would the slide and barrel be facing?

9           **A.**   The barrel would be facing towards the right where  
10          that officer is pictured.

11          **Q.**   All right. So it would be towards Mr. Douglas'  
12          right arm?

13          **A.**   Yes.

14          **Q.**   Horizontally?

15          **A.**   Right.

16          **Q.**   Okay. In your recognition of that item, was that  
17          based upon -- it is a gun -- is that based upon your  
18          familiarity with handguns and your training and experience?

19          **A.**   Yes.

20          **Q.**   All right. I am going to ask to play, with the  
21          sound hopefully up a little bit, from 19:03 of Government's  
22          Exhibit 4 to 19:03:16.

23                   (Played audio.)

24                  All right. Did you hear in the last part of that  
25          clip you saying, "Is that your glasses case?"

1           **A.**    I believe I asked what was that and the defendant  
2           said "glasses case" and I repeated that.

3           **Q.**    So you asked him what that was and he said,  
4           "glasses case" and you repeated, "Is that your glasses  
5           case?"

6           **A.**    Right.

7           **Q.**    And while you were conducting that frisk, did you  
8           -- (cell phone ringing.)

9                   MR. WASSERMAN: I'm sorry, Your Honor. I thought  
10           I turned that off.

11           **BY MR. WASSERMAN:**

12           **Q.**    Officer Poupart, were you able to feel anything  
13           else other than the gun during the pat down?

14           **A.**    Yes.

15           **Q.**    And did you know what that was, before he told you  
16           it was a glasses case?

17           **A.**    No, I didn't know what it was.

18           **Q.**    All right. Were you able to distinguish during  
19           your pat down between whether there were two separate items  
20           or, you know, whether it was just one big item?

21           **A.**    It felt like there was an additional item in with  
22           the firearm.

23           **Q.**    I am going to show you Government's Exhibit 4-B.  
24           Do you recognize that photograph?

25           **A.**    Yes.

1           **Q.**    Was that just a still shot from your body worn  
2           camera?

3           **A.**    Yes.

4           **Q.**    And is that a fair and accurate depiction of at  
5           least part of the external frisk you conducted on that date,  
6           April 22nd?

7           **A.**    Yeah.

8                   MR. WASSERMAN: Your Honor, I move Government's  
9           Exhibit No. 4 into evidence.

10                   MR. MARSTON: No objection.

11                   MR. OHM: No objection.

12                   THE COURT: Government's Exhibit 4-B is admitted.

13                   (Government's Exhibit No. 4-B was admitted.)

14                   (Government's Exhibit Nos. 6-A and 6-B were marked  
15           for identification.)

16           **BY MR. WASSERMAN:**

17           **Q.**    Can you describe what you are feeling in that  
18           particular still shot?

19           **A.**    In that shot I am feeling the firearm.

20           **Q.**    All right. I want to show you Government's  
21           Exhibits 6-A and 6-B.

22                   MR. WASSERMAN: Your Honor, can I approach?

23                   THE COURT: Please.

24           **BY MR. WASSERMAN:**

25           **Q.**    If you can just take 6-A out of the bag.

1           **A.**     (Complied.)

2           **Q.**     What does 6-A consist of?

3           **A.**     The firearm.

4           **Q.**     Is that also a magazine there?

5           **A.**     Yes, firearm and magazine.

6           **Q.**     Do you recognize Government's Exhibit 6-A?

7           **A.**     Yes.

8           **Q.**     What is it?

9           **A.**     It's the firearm removed from the backpack.

10          **Q.**     And the firearm that was removed on April 22nd,  
11 was that firearm, 6-A, loaded? Was the magazine loaded with  
12 ammunition?

13          **A.**     Yes.

14          **Q.**     And was it loaded into the gun, into the butt of  
15 the gun?

16          **A.**     Yes.

17          **Q.**     So other than that the magazine is now removed and  
18 the ammo is separate, is it substantially the same  
19 condition?

20          **A.**     Yes.

21                 MR. WASSERMAN: Your Honor, I move Government's  
22 Exhibit 6-A into evidence.

23                 MR. MARSTON: No objection.

24                 MR. OHM: No objection.

25                 THE COURT: So admitted.

1 (Government's Exhibit No. 6-A was admitted.)

2 **BY MR. WASSERMAN:**

3 **Q.** Looking at Government's Exhibit 6-B in the bag, do  
4 you recognize the items in that bag?

5 **A.** Yes.

6 **Q.** What is that?

7 **A.** The ammunition that would have been in the  
8 firearm.

9 **Q.** Again, other than it being outside of the magazine  
10 and the firearm, is it substantially the same condition?

11 **A.** Yes.

12 **MR. WASSERMAN:** Your Honor, I move Government's  
13 Exhibit 6-B into evidence.

14 **MR. MARSTON:** No objection.

15 **MR. OHM:** No objection.

16 **THE COURT:** Government's Exhibit 6-B is admitted.

17 (Government's Exhibit No. 6-B was admitted.)

18 **BY MR. WASSERMAN:**

19 **Q.** Recognizing that the magazine is not inside of the  
20 butt of the firearm, can you actually hold up Government's  
21 Exhibit 6-A and just kind of show us what parts of the  
22 firearm you felt that you recognized during the external  
23 frisk and how it was positioned in the bag?

24 **THE COURT:** Please stand up.

25 **THE WITNESS:** It was against his back, here, this

1 position, left arm, right arm, positioned in the bag with  
2 the slide forward at the time but it was positioned like  
3 this in the bag. Feeling it in a manner similar to this, I  
4 was feeling the grip as well as the lower portion.

5 **BY MR. WASSERMAN:**

6 **Q.** I'm sorry, lower portion what?

7 **A.** Lower portion of the slide and the grip.

8 **Q.** You are holding the firearm in your hand with the  
9 butt of the gun facing up and your thumb sort of towards the  
10 butt of the gun and your forefinger there on the slide and  
11 the barrel of the gun sort of facing towards your left side  
12 of your body. Is that accurate, Officer, just the way you  
13 are holding it now?

14 **A.** Sure.

15 **Q.** Okay.

16 **THE COURT:** It is pointing towards the right side  
17 of his body. I think most importantly, he has described how  
18 the gun was positioned, we believe, against the defendant's  
19 back in relation to the defendant's body. Correct, Officer?

20 **THE WITNESS:** That's correct, Your Honor.

21 **MR. WASSERMAN:** Thank you.

22 **BY MR. WASSERMAN:**

23 **Q.** With respect to the other item that you felt, do  
24 you have a sense for where it was positioned? Was it in  
25 front of the gun or closer to the defendant's back?

1           **A.**    In front of the gun.

2           **Q.**    All right. And was it -- do you know whether it  
3           -- was that object, you know, was it horizontal or was it up  
4           vertical, if you know, to the other object that you felt?

5           **A.**    It felt like it was laying horizontal.

6           **Q.**    Okay. Thank you. Have a seat.

7                   I want to play for you now, Government's Exhibit 4  
8           from 19:03:16 to about 19:04.

9                   (Played audio.)

10                   Officer Poupart, just so we are clear, in terms of  
11           when you first recognize that item as a firearm, when did  
12           you first recognize it? Was it during that initial frisk?

13           **A.**    Yes.

14           **Q.**    All right. So in the clip that we just played,  
15           did you ask the defendant if he minded if you searched the  
16           bag?

17           **A.**    Yes.

18           **Q.**    And what was his response?

19           **A.**    He did not consent, in other words.

20           **Q.**    Okay. And what did you say, you know, if  
21           anything? Did you hear what he said after he said, You  
22           can't search it or you can't look in it? He said something  
23           to the effect that it was just glasses or glasses case.  
24           Were you able to hear what your response was?

25           **A.**    I said, I don't know that that is a glasses case.



1           **Q.**   Why did you ask the defendant for consent to  
2           search at this point if you had already recognized the item  
3           as a firearm?

4           **A.**   I like to give people the opportunity to be  
5           honest.

6           **Q.**   I'm sorry?

7           **A.**   I like to give people the opportunity to be  
8           honest.

9           **Q.**   Okay. So did your asking him for consent to  
10          search have anything to do with whether you -- you know,  
11          your degree of certainty about what you thought?

12          **A.**   No.

13          **Q.**   Why did you say, I don't know if that is your  
14          glasses case?

15          **A.**   Typically, we don't like to use the word gun on  
16          the scene unless it is an emergency situation. We don't use  
17          that and it's just not something I would say to someone.

18          **Q.**   I mean, why would you be concerned about saying,  
19          Hey, that's not your glasses case, it's a gun?

20          **A.**   It's going to make that person much more likely to  
21          flee, fight, endanger the scene.

22          **Q.**   All right. Going to Government's Exhibit 4, I  
23          want to play, if we can, from 19:04:57 to 19:05.

24                   (Played audio.)

25                  All right. In that clip, from Exhibit 4, were you

1 able to hear what you said?

2 **A.** Yes. I said the guy with the blue jacket, is he  
3 good for a search?

4 **Q.** Why were you asking about whether he was good for  
5 a search at that point?

6 **A.** It's my way of checking with everyone else that  
7 the scene is safe and secure. I did not have eyes on the  
8 other subject that was involved. I didn't know if he was  
9 stopped, secured or detained. I don't want to conduct a  
10 search for a firearm in a bag if the other suspect that was  
11 involved is not stopped or secured. Definitely could have  
12 someone running.

13 **Q.** Did your request for permission to -- permission  
14 to search, for lack of a better way of phrasing, have  
15 anything to do with your level of certainty of what you had  
16 initially felt in that external frisk?

17 **A.** No.

18 **Q.** I want to play from 19:05:06 to 19:05:13.

19 (Played audio.)

20 In that clip, what was the result of the search?  
21 You opened up the backpack at that point; is that correct?

22 **A.** Yes.

23 **Q.** What did you observe, if anything?

24 **A.** I observed a firearm in the backpack.

25 **Q.** Did you hear yourself say "1-800"?

1           **A.**    Yes.

2           **Q.**    What does that mean?

3           **A.**    It is our code word for presence of a firearm.

4                   (Government's Exhibit No. 7 was marked for  
5 identification.)

6           **BY MR. WASSERMAN:**

7           **Q.**    I want to show you Government's Exhibit No. 7 for  
8 identification. Do you recognize that photograph?

9           **A.**    Yes.

10          **Q.**    And what is that photograph?

11          **A.**    It's a photograph of the firearm inside of the  
12 backpack.

13          **Q.**    Is that the same firearm that is Exhibit 6-A on  
14 your table there?

15          **A.**    Yes.

16          **Q.**    Is it a fair and accurate depiction of how the  
17 firearm appeared inside of the backpack on April 22nd at the  
18 time that it was recovered?

19          **A.**    Yes.

20                   MR. WASSERMAN: Your Honor, I would move for  
21 Government's Exhibit No. 7 into evidence.

22                   MR. MARSTON: No objection.

23                   MR. OHM: No objection.

24                   THE COURT: Government's Exhibit No. 7 is  
25 admitted.

1 (Government's Exhibit No. 7 was admitted.)

2 **BY MR. WASSERMAN:**

3 **Q.** Do you recall whether ultimately there was a  
4 glasses case recovered or found inside of that backpack?

5 **A.** Yes, I believe there was.

6 **Q.** All right. And were you the one that actually did  
7 the removal, once it was -- well, was the backpack taken off  
8 Mr. Douglas after you initially looked in and found it?

9 **A.** Yes.

10 **Q.** Did somebody else actually conduct the search and  
11 removal of the firearm?

12 **A.** Yes.

13 **Q.** All right. That wasn't you?

14 **A.** Correct.

15 **Q.** All right. And did you see specifically where  
16 that glasses case was located at the time it was removed?

17 **A.** I think it was against the firearm, but I can't  
18 specifically recall at the moment.

19 **Q.** You are not sure at the moment?

20 **A.** No.

21 **Q.** All right. After you observed the gun inside Mr.  
22 Douglas' backpack, you said "1-800". What was done with Mr.  
23 Douglas at that point?

24 **A.** At that point he was placed under arrest.

25 **Q.** And his backpack was also seized?

1           A.    Yes.

2           Q.    All right.

3                   (Government's Exhibit No. 9 was marked for  
4   identification.)

5   **BY MR. WASSERMAN:**

6           Q.    I am going to show you what has been marked for  
7   identification as Government's Exhibit No. 9. Do you  
8   recognize that exhibit?

9           A.    Yes.

10          Q.    What is it?

11          A.    The backpack that was taken off of Mr. Douglas.

12          Q.    Does it appear to be in substantially the same  
13   condition as when you found it on Mr. Douglas on April 22nd?

14          A.    Yes.

15               MR. WASSERMAN: Your Honor, I move Government's  
16   Exhibit No. 9 into evidence.

17               MR. MARSTON: No objection.

18               MR. OHM: No objection.

19               THE COURT: So admitted.

20               (Government's Exhibit No. 9 was admitted.)

21               MR. WASSERMAN: Your Honor, that is all I have.

22               THE COURT: Thank you. Mr. Ohm, I assume?

23                               **CROSS EXAMINATION**

24   **BY MR. OHM:**

25          Q.    Good afternoon, Officer.

1           **A.**    Good afternoon.

2           **Q.**    When you approached Mr. Douglas, he didn't try to  
3 flee, did he?

4           **A.**    No.

5           **Q.**    And you said, Come over here for a minute. Right?

6           **A.**    Correct.

7           **Q.**    And he complied with your direction?

8           **A.**    He did.

9           **Q.**    You told him he was being stopped as part of an  
10 investigation?

11          **A.**    Right.

12          **Q.**    And he walked with you. Right?

13          **A.**    Yes.

14          **Q.**    Then you took out your handcuffs. Right?

15          **A.**    Yes.

16          **Q.**    He basically put his hands behind his back. You  
17 didn't have to tell him to do that?

18          **A.**    I think we guided his hands behind his back. I  
19 don't specifically recall.

20          **Q.**    You didn't say, Put your hands behind your back?

21          **A.**    He wasn't forced into handcuffs.

22          **Q.**    I'm sorry. He complied with you and did not  
23 resist at all in terms of being handcuffed. Right?

24          **A.**    Sure.

25          **Q.**    And at that point there was no indication that he

1 wasn't being compliant. Right?

2 A. No, not at that time.

3 Q. And really at any time.

4 A. No, he was complying.

5 Q. Now, you testified -- I just want to make sure I  
6 have this right. Mr. Wasserman asked you why you placed him  
7 in handcuffs. Right?

8 A. Yes.

9 Q. You said it was common for officers' safety to put  
10 people in handcuffs?

11 A. Yes.

12 Q. When would you put somebody in handcuffs?

13 A. Well, I mean, that depends. It is situational.

14 Q. Okay. So it sounded like you were saying that  
15 generally speaking, when you are doing the drug operations,  
16 when you are told to move in, then you place people in  
17 handcuffs. Is that fair?

18 A. Yes.

19 Q. You do that almost all of the time?

20 A. Pretty much.

21 Q. It doesn't matter if somebody is trying to flee.  
22 Right?

23 A. [Inaudible] -- A person in handcuffs you typically  
24 don't move in when the individuals are handcuffed.

25 Q. I'm having a tough time hearing you.

1           **A.**    I'm sorry. Typically it is the arrest team and  
2 sometimes they are handcuffed.

3           **Q.**    Now, at this time when you are approaching Mr.  
4 Douglas, you don't know Mr. Douglas. Right?

5           **A.**    Correct.

6           **Q.**    You haven't heard of Mr. Douglas as being someone  
7 who is armed and dangerous?

8           **A.**    No, I don't personally know him.

9           **Q.**    Okay. And you know that there was a suspicion of  
10 contraband in the bag, but you don't know what that  
11 contraband is. Right?

12          **A.**    Correct.

13          **Q.**    And no one -- I think you had said something about  
14 complaints about drug activity. There were no complaints  
15 about gun sales or gun operations in that neighborhood.  
16 Right?

17          **A.**    Not that I know of.

18          **Q.**    And you were definitely conducting observations  
19 both for potential marijuana sales, cocaine sales and that?

20          **A.**    Narcotics in general.

21          **Q.**    And no one had called in and said there is a man  
22 with a gun out there that day. Right?

23          **A.**    No, not that I know of.

24          **Q.**    Now, as you approach Mr. Douglas, you could see  
25 both of his hands. Right?



1           **A.**    Yes.

2           **Q.**    They were actually sort of swinging like he was  
3           kind of hanging out, like this.   Right?   (Indicated)

4                   MR. OHM:   If the record could reflect I am  
5           swinging my hands back and forth.

6                   THE WITNESS:   I guess.

7           **BY MR. OHM:**

8           **Q.**    There was no movement of his hands towards any  
9           other part of the body?

10          **A.**    Not that I recall.

11          **Q.**    The information that you had was that the  
12          potential contraband was underneath the jacket in a book  
13          bag.   Right?

14          **A.**    Correct.

15          **Q.**    When Officer Jackson reported a book bag, he  
16          didn't say it was open.   Right?

17          **A.**    Right.

18          **Q.**    He didn't say, Be careful.   What is in that book  
19          bag, it is easy to access what is in it.   Nothing like that?

20          **A.**    No.

21          **Q.**    All right.   And when you first made contact with  
22          him, for Mr. Douglas to get into that bag, he would have had  
23          to have taken off his jacket, taken off the backpack,  
24          unzipped the book bag and get whatever is inside; is that  
25          fair?

1           **A.**    That would be the easiest way.

2           **Q.**    Well, was there any other way?

3           **A.**    I don't know if he is flexible enough to reach  
4 around. It's unlikely.

5           **Q.**    You can at least agree it is not like accessing  
6 the waistband. It is pretty hard to get what is in that  
7 backpack. Correct?

8           **A.**    Correct.

9           **Q.**    You were part of the arrest team for this  
10 operation?

11          **A.**    Correct.

12          **Q.**    How many individuals were part of the arrest team?

13          **A.**    I don't recall how many that day. Maybe -- do you  
14 want me to approximate?

15          **Q.**    Sure.

16          **A.**    Maybe eight.

17          **Q.**    Okay. And when Officer Jackson puts in the call  
18 for arrests, the whole arrest team comes out. Right?

19          **A.**    Yeah.

20          **Q.**    It's not like there's an Officer Jackson team  
21 where only two people come out?

22          **A.**    Once in a while the team gets separated or some of  
23 them are still on something else. But in this case, I  
24 believe the whole arrest team --

25          **Q.**    So approximately eight people came out and that

1 was the understanding that you had when you were moving in  
2 for arrest.

3 A. Eventually. Like I previously stated, my partner  
4 and I were the first on scene.

5 Q. Right. And you knew that other people were also  
6 listening to the same radio communications that Officer  
7 Jackson was making. Right?

8 A. Correct.

9 Q. You knew that they were supposed to join you in  
10 coming out?

11 A. Yes.

12 Q. You didn't think that they were going to sit back  
13 in their cars while you and Officer Taylor were dealing with  
14 it?

15 A. I hope not.

16 Q. You also knew they were close by. Right?

17 A. I don't know their locations when they are waiting  
18 for a call, but I assumed they were relatively close.

19 Q. When you say "relatively close," you mean within a  
20 block or two, not like 15. Right?

21 A. Yeah, within a few blocks.

22 Q. Now showing your body worn camera, I want to make  
23 sure we have a decent sense --

24 MR. OHM: I will mark this, Your Honor, as --

25 THE COURT: So you are marking what is

1 Government's Exhibit 4, body worn camera footage, as  
2 Defendant Douglas' Exhibit 3?

3 MR. OHM: Yes, Your Honor.

4 THE COURT: Okay.

5 (Defendant Douglas' Exhibit No. 3 was marked for  
6 identification.)

7 **BY MR. OHM:**

8 Q. I am right now at 19:02:52, the timeframe in the  
9 upper right-hand corner. This is when you and Officer  
10 Taylor make initial contact with Mr. Douglas. Right?

11 A. Yes.

12 Q. Okay. And for clarity, I am going to scroll back  
13 a little bit so we know -- we will go to :33, that is when  
14 you put your hands on Mr. Douglas. Right?

15 A. Yes.

16 Q. All right. And then 19:02:43 is when you hear the  
17 handcuffs going on. Right?

18 A. Yes.

19 Q. It's fair to say that he is not free to leave.  
20 Right?

21 A. No, he is detained.

22 Q. And it's also fair to say when you first put your  
23 hands on him, he is also not free to leave. Right?

24 A. Correct.

25 Q. Okay. So now it is 19:02:55 and other officers

1 are converging on the scene. Right?

2 A. Yes.

3 Q. You know that these officers are responding to  
4 Officer Jackson's call to move in. Right?

5 A. Yes.

6 Q. Although they first appear on your video at  
7 19:02:55, they are obviously walking up before. They don't  
8 just magically appear there. Right?

9 A. I would think so, yeah.

10 Q. These are the folks you knew would come and  
11 support you shortly after you were making contact with Mr.  
12 Douglas?

13 MR. WASSERMAN: Objection. It calls for  
14 speculation.

15 THE COURT: Rephrase it.

16 BY MR. OHM:

17 Q. These are the folks that are part of the arrest  
18 team whose job it is to support you also. Right?

19 A. Correct.

20 Q. And I know that you said that you thought that  
21 maybe there were about eight people out there. I want to  
22 see if the body worn camera shows that there might be a few  
23 more. I will go to 19:03:35. At this point you can sort of  
24 see a couple officers in the background.

25 A. Yeah.

1 Q. And in the background here you can also see there  
2 are other officers who are posted in the parking lot area.  
3 Right?

4 A. Yes.

5 Q. There are also marked cars on the scene. Right?

6 A. There was a marked car there.

7 Q. Now, at no time during your interaction with Mr.  
8 Douglas did he threaten to harm any officer or anybody else?

9 A. Not that I recall.

10 Q. In fact, Mr. Douglas never indicated that he had a  
11 weapon. Right?

12 A. No.

13 Q. And the other individuals that were standing  
14 there, there was no time where any of those individuals made  
15 any comments towards you. Correct?

16 A. Not to me.

17 Q. Well, during the time where you are walking up to  
18 Mr. Douglas, did any of those individuals ever say anything  
19 to you, that is even remotely threatening?

20 A. No.

21 Q. Did any of them talk to you at all?

22 A. That I don't recall. I don't know.

23 Q. And the same with Officer Taylor. Did any of  
24 those individuals say anything to Officer Taylor that was  
25 threatening?

1           **A.**    Not that I know of.

2           **Q.**    Did you notice or see any of them making any  
3 gestures towards waistbands or towards anything else?

4           **A.**    Not that I recall, no.

5           **Q.**    So your assessment of them being threatening to  
6 you was sort of the general assessment that they are in a  
7 neighborhood conducting a street encounter and stopping an  
8 individual.

9           **A.**    Can you repeat that?

10          **Q.**    Those other two individuals that were there, when  
11 you assessed them as a possible threat to you, that is only  
12 because you are in a neighborhood, in a general street  
13 encounter; that's the basis of your assessment?

14          **A.**    At the time my partner and I were the only ones on  
15 the scene. There were two other gentlemen besides Defendant  
16 Douglas. I don't know who they are, if they are armed and  
17 what their intentions are; that's my basis.

18          **Q.**    But in terms of specifics about those two  
19 individuals or this situation, was there anything else that  
20 you knew about what was going on that made you concerned  
21 about the two individuals?

22          **A.**    Other than what I just listed?

23          **Q.**    Right. Just the general fact that they were  
24 there.

25                THE COURT: Let's pause for one second. We may be

1 losing a charge.

2 CLERK: (Replaced microphone batteries.)

3 **BY MR. OHM:**

4 Q. I assume you will ask me to repeat my question.

5 A. Sorry. Yeah.

6 Q. Other than the presence of these two individuals  
7 and the fact that it was a street encounter, was there  
8 anything about them specifically that made you concerned  
9 about your safety?

10 A. Not specifically other than the things that I  
11 previously listed.

12 Q. That you didn't know if they were armed?

13 A. Right. The possibility that they could be armed,  
14 what their intentions are or are not. The possibility of  
15 flight and things like that. Other than that, no.

16 Q. Okay. Well, them fleeing is not a concern to you?

17 A. I was referencing Mr. Douglas.

18 Q. Mr. Douglas himself did not show any indication of  
19 fleeing. Right?

20 A. Most people don't until they do.

21 Q. Did you ask any of them if they were armed?

22 A. No.

23 Q. Did you ask them to step back 20 yards?

24 A. No, that's why I moved Mr. Douglas away from them  
25 so I wouldn't have to.



1           Q.    Okay. And just to be 100% clear, you didn't see  
2           them actually do anything, reach for anything on their  
3           person?

4           A.    No.

5           Q.    And you had no reason to suspect that they were --  
6           actually suspect they were armed other than the fact that  
7           you did not know that they weren't.

8           A.    Right.

9           Q.    When you and Officer Taylor approached, you were  
10          fully uniformed you said?

11          A.    Correct.

12          Q.    Your firearm was on your hip?

13          A.    Correct.

14          Q.    Was visible?

15          A.    Yes.

16          Q.    Officer Taylor's firearm was also visible?

17          A.    Yes.

18          Q.    I know you were talking about the glasses case  
19          versus the firearm. I just wanted to ask you when you were  
20          feeling which. I am going to go back to Defendant's 3,  
21          which is Government's 4?

22                THE COURT: I believe it is Defendant Douglas' 3.  
23                (Played video.)

24          BY MR. OHM:

25          Q.    So we are at 19:03:01. Is it fair to say that is

1 the first time you touched Mr. Douglas' back?

2 A. Yes.

3 Q. What are you feeling right there?

4 A. At that point I noticed a protrusion in his  
5 jacket, the backpack. At that point it looks like I am  
6 feeling -- it's the beginning of a frisk. It looks like I  
7 am feeling part of the sunglass case and my thumb either is  
8 or is about to be pressed up against the grip of the  
9 firearm.

10 Q. Okay. So what are you trying to do when you are  
11 feeling like this?

12 A. I am trying to articulate what's there.

13 Q. You are trying to figure out what it is?

14 A. Yeah. Right.

15 Q. Now you are feeling at 19:03:03 another part of  
16 the jacket sort of more towards, I guess, middle to right of  
17 middle?

18 A. Yes.

19 Q. And what are you feeling there?

20 A. The the end of the object.

21 Q. Okay. Which object?

22 A. It looks like probably the glasses case, maybe.

23 Q. Okay. Do you not know at the time?

24 A. I don't specifically remember. I can't say  
25 exactly what my finger was on that second. I know what

1 objects were there.

2 Q. You had said when we were at 19:03:01, you said  
3 you could feel a gun. When you are holding the left part of  
4 the jacket and you now concluded -- are you concluding in  
5 hindsight it was a sunglass case or did you know it was a  
6 sunglass case when you first felt it?

7 A. I couldn't definitively say it was a sunglass case  
8 until I saw it.

9 Q. But you didn't suspect it was a gun?

10 A. Not the sunglass case.

11 Q. So you felt an object. You said this is some  
12 random object that is not a gun in your mind?

13 A. Right.

14 Q. Okay. And then I think you said right here at  
15 19:03:01 your finger could feel the slide of the gun; is  
16 that right?

17 A. Right.

18 Q. At that point in time did you identify it as a  
19 gun?

20 A. In reaching around, essentially around the  
21 sunglass case, my thumb is up now on the grip of the  
22 firearm.

23 Q. Okay. Could you tell it was a firearm?

24 A. From my first guess?

25 Q. At this point in time?

1           **A.**    Yeah, I would say.

2           **Q.**    So you are feeling the sunglasses but your thumb  
3    is feeling, what you were saying now was the gun and you  
4    knew it was the gun at this moment, at 19:03:01.

5           **A.**    Can you go back a split second where it stops and  
6    starts?

7           **Q.**    Starting at 19:02:56. Okay. So you immediately  
8    feel it is a gun on your thumb?

9           **A.**    At this point, no.

10          **Q.**    Right before that in -- I went back like you asked  
11   me to. Can you tell me to stop when you first feel the gun  
12   and know that it's a gun?

13          **A.**    Sure.

14          **Q.**    All right.

15                (Continued playing the video.)

16          **A.**    There.

17          **Q.**    So 19:03:05 is when you first believe you are  
18   feeling a gun?

19          **A.**    Correct.

20          **Q.**    Okay. So when you are talking about the thumb  
21   before, is that something that in hindsight you now think  
22   was a gun, but you didn't know at the time?

23          **A.**    When I am feeling that handle with my thumb, I  
24   recognized it to be the handle of the firearm.

25          **Q.**    Okay. So at 19:03:01 you know you are feeling the

1 gun.

2 (Playing video again.)

3 So right there you know your thumb is touching a  
4 gun.

5 **A.** I told you it was after that. Keep going.

6 **Q.** Up until this point you don't know that you are  
7 dealing with a gun?

8 **A.** I am suspecting that it's a gun and I am  
9 furthering that as I am continuing to frisk his bag.

10 **Q.** So at 19:03:10 you are suspecting it is a gun; is  
11 that fair?

12 **A.** Sure. At this point it looks like I am feeling it  
13 pretty well. Yeah, I will say it was a firearm.

14 **Q.** Before that, 19:03:10, you feel like you are  
15 feeling the sunglasses.

16 **A.** Yeah. I mean at one point I would say I was  
17 feeling the sunglass case. It is difficult to go back in  
18 time in split-second stills to go back and say what your  
19 mind was thinking or feeling. I am doing the best for you,  
20 here. At this point I think it is safe to say, yes, I  
21 believe I was feeling a firearm.

22 **Q.** Okay. Is it fair to say at this point this is the  
23 first time where you feel like you are feeling a firearm or  
24 suspecting you feel like you are feeling a firearm?

25 **A.** Yes.

1 Q. When you mention your thumb feeling something  
2 earlier, you are talking about this 19:03:10 time frame?

3 A. Yes.

4 (Playing video.)

5 Q. Now, when Mr. Douglas says, It's a glasses case,  
6 at that point in time you also agree there is at least a  
7 glasses case in there?

8 A. Yeah, or a similar-shaped object.

9 Q. What you are trying to figure out is if there is  
10 something else in there.

11 A. Right. If there is something else in there.

12 Q. It is good you are squeezing to figure out.

13 A. Right.

14 Q. You feel like you successfully did that or at  
15 least starting at 19:03:10.

16 A. Yeah.

17 THE COURT: Mr. Ohm, I think we need to take  
18 another break for the court reporter. Before we do that,  
19 though, how much longer do you think you have?

20 MR. OHM: Probably about 15 to 20 minutes.

21 THE COURT: Let's take a brief recess. Before we  
22 do, though, are there going to be any other witnesses?

23 MR. WASSERMAN: Not from the Government.

24 MR. OHM: I have Officer Taylor. At this point I  
25 don't think so but I probably --

1 THE COURT: You can reserve but you think it's  
2 unlikely. Here is why I ask: If we do -- if we resume 15  
3 minutes from now and were to go to 4:15 approximately, with  
4 the continuation of cross -- I am assuming you don't have  
5 anything, Mr. Marston?

6 MR. MARSTON: No questions.

7 THE COURT: Redirect from the Government we will  
8 be at 4:15 or so. I think that what I may do is just call  
9 the hearing for the day. We will have had all of the  
10 evidence introduced and then I may ask you all separately,  
11 perhaps tomorrow or at a time when we can agree on, to argue  
12 the motions based on what the record would reflect.

13 That's what I am thinking. I am not so sure about  
14 that yet, but let's at a minimum, for the court reporter's  
15 sake and for those working here, let's come back at 3:48.  
16 We can finish with this witness, let the officer go, and  
17 talk about next steps.

18 MR. OHM: Your Honor, would the court admonish the  
19 witness not to discuss his testimony?

20 THE COURT: Yes. Please do not discuss your  
21 testimony with anyone.

22 THE WITNESS: Very good, Your Honor.

23 CLERK: All rise. Court is in recess.

24 (Break.)

25 CLERK: Court is now in session. Please be seated

1 and come to order.

2 We are now back on the record.

3 MR. OHM: May I proceed?

4 THE COURT: Please.

5 MR. OHM: Thank you.

6 **BY MR. OHM:**

7 **Q.** Good afternoon. We stopped around 19:03:11 which  
8 is when you first feel you are identifying it as a gun.  
9 Okay?

10 (Playing video.)

11 Okay. See how at 19:03:15 you switch over to a  
12 different part?

13 **A.** Yes.

14 **Q.** Is that the gun or the sunglasses case?

15 **A.** I believe it is both.

16 **Q.** You believe you are feeling both at that point?

17 **A.** Yes.

18 **Q.** You hear yourself say, Is this the glasses case?

19 **A.** Yes. He mentioned a glasses case and I said, Is  
20 this a glasses case?

21 **Q.** Is that at 19:03:17? Is that what are you feeling  
22 when you say, Is this the glasses case?

23 **A.** Yeah.

24 **Q.** Was that -- do you hear the statement, The book  
25 bag is underneath the sweat shirt, at 19:03:38?



1           **A.**    Yes.

2           **Q.**    Who was it that said that?

3           **A.**    I did.

4           **Q.**    Was that in response to anything or was it just  
5 something you just said?

6           **A.**    I don't recall.

7           **Q.**    Okay. Does it sound familiar that somebody said,  
8 Negative on the book bag?

9           **A.**    I don't remember.

10          **Q.**    Okay. Now, whose decision was it to take off his  
11 jacket?

12          **A.**    Mine.

13          **Q.**    And what was the purpose of that?

14          **A.**    To get to the book bag.

15          **Q.**    Okay.

16          **A.**    Because I felt what I recognized to be a firearm  
17 inside of it.

18          **Q.**    Pardon me?

19          **A.**    Because I felt what I recognized to be a firearm  
20 in the book bag.

21          **Q.**    Okay. So is your purpose -- is it fair to say the  
22 purpose of taking off the jacket -- you are no longer in the  
23 external frisk section, you are beginning the search; is  
24 that fair?

25          **A.**    The search hasn't started yet. I am feeling the

1 jacket for the book bag.

2 Q. What is the purpose of exposing the book bag?

3 A. Essentially, I haven't seen the book bag yet.

4 Q. Okay. So at this point you have your eyes on the  
5 book bag. Right? We are now at 19:03:38. Do you see  
6 yourself -- it looks like you are pulling down the zipper a  
7 little bit more?

8 A. I'm sorry?

9 Q. What are you doing with your left hand at  
10 19:03:38?

11 A. My left hand is touching the strap of the book  
12 bag.

13 Q. Okay. And what are you trying to do with it?

14 A. I was just articulating.

15 Q. I'm sorry?

16 A. Articulating. I don't recall exactly what I was  
17 doing with it.

18 Q. All right. Okay. And now you see yourself  
19 putting your hand on the backpack. Right?

20 A. Correct.

21 Q. And this is when you say something to the effect,  
22 Do you mind if I search?

23 A. Correct.

24 Q. And he says, No?

25 A. Correct.

1 Q. Now, you testified on direct examination -- what  
2 was the reason why you said, Do you mind if I search?

3 A. I was giving him the opportunity to be honest with  
4 me.

5 Q. That's the only reason?

6 MR. WASSERMAN: I can't really hear Mr. Ohm. He's  
7 not near the microphone.

8 MR. OHM: My computer is over here. I'm sorry.

9 CLERK: (Provided Mr. Ohm with a lapel mic.)

10 MR. OHM: Can you hear me? Can you hear me?

11 BY MR. OHM:

12 Q. Okay. So I think you said -- you just said that  
13 the reason you asked him, Do you mind if I search, had  
14 nothing to do with trying to get consent to search. Is that  
15 fair?

16 A. Well, I mean, I am asking -- as I said, it's a  
17 courtesy, in my eyes.

18 Q. Are you trained on that?

19 A. What do you mean?

20 Q. Are you trained on giving a courtesy or giving a  
21 person the opportunity to tell the truth?

22 A. Not specifically. I like to give people the  
23 opportunity to tell the truth.

24 Q. Okay. And what happens if they tell the truth  
25 versus if they don't?

1 MR. WASSERMAN: Objection.

2 MR. OHM: He can tell the answer of the witness.

3 THE COURT: I will allow it.

4 THE WITNESS: I will still do my job either way,  
5 just giving them the opportunity to tell the truth.

6 **BY MR. OHM:**

7 Q. Okay. So other than giving someone an opportunity  
8 to be honest, you had no other reason to ask to search his  
9 bag?

10 A. No.

11 Q. Okay. And you are familiar with consent within  
12 the Fourth Amendment and the police officer's job. Right?

13 A. Right.

14 Q. But that didn't enter into your mind?

15 A. No. At this point, I already articulated enough  
16 to search the bag.

17 Q. Okay. Now, Mr. Douglas said immediately, No.  
18 Right?

19 A. Correct.

20 Q. So at that point you are free to search. Right?

21 A. Correct.

22 (Playing video.)

23 I think it was at 19:03:58 where you hear him  
24 saying -- you can hear yourself saying, I don't know if that  
25 is possible.

1           **A.**    Correct.

2           **Q.**    It was said in response to Mr. Douglas saying you  
3           can't search. Right?

4           **A.**    Yeah, I think so.

5           **Q.**    Okay. So now it's 19:04, you still haven't  
6           searched yet.

7           **A.**    Right.

8                   (Playing video.)

9           **Q.**    Now it is 19:40:09 and you still haven't searched.  
10          Right?

11          **A.**    Yes.

12          **Q.**    It is 12 seconds since he declined the opportunity  
13          to tell the truth. Right?

14          **A.**    I wasn't watching the clock. If you say 12  
15          seconds.

16          **Q.**    So far it is 12 seconds.

17          **A.**    Okay.

18          **Q.**    Now it is 19:04:19. Why haven't you searched him?

19          **A.**    I don't know if the other individual is stopped,  
20          if the scene is secure.

21          **Q.**    Did you ask?

22          **A.**    When you hear my radio key up and go Mmmm it means  
23          someone else was talking so I couldn't.

24          **Q.**    Okay. So right now it sounds like everything is  
25          clear. Right?

1           **A.**    No. I think they are still talking on the radio.

2           **Q.**    I just want to make sure I understand what you are  
3 saying. Since 19:03:58 or so that's where Mr. Douglas says  
4 you can't search, the entire time you are just waiting to  
5 confirm whether the other suspect has been apprehended?

6           **A.**    Yes. Waiting to confirm the scene is secure so I  
7 can search him.

8           **Q.**    That's the only thing you are waiting for?

9           **A.**    Yes.

10          **Q.**    Okay. And at this point you are surrounded by  
11 around 10 officers. Is that fair?

12          **A.**    I didn't count but there are several officers.

13          **Q.**    So when you say the scene isn't secure, what is  
14 going on in your mind? What are you thinking?

15          **A.**    I don't know if the other subject has been  
16 stopped, detained, secured. Because you could have a  
17 scenario where I pull a firearm out of his backpack and he  
18 sees it and takes off running. Then we have officers going  
19 after that subject.

20          **Q.**    Fair. But you don't have to pull the firearm out  
21 of the bag. Right?

22          **A.**    No.

23          **Q.**    In fact, you never pull the firearm out of the  
24 backpack. Right?

25          **A.**    Right.

1           Q.    You just look in to see if there is a firearm in  
2           your search?

3           A.    [NODDED HEAD]

4           Q.    So that wouldn't -- that scenario you just laid  
5           out wouldn't happen. Right?

6           A.    Well, the firearm is going to come off of his  
7           person. It is going to come out of the bag. I personally  
8           didn't do it, but it's going to come off him. I would like  
9           to make sure that the other party involved is secure before  
10          we take it off of him.

11          Q.    Is that something you are trained on?

12          A.    Yes, considering officer safety, scene safety,  
13          scene security, I would say, yes.

14          Q.    So specifically, you are worried about if you open  
15          the bag like you did --

16               MR. WASSERMAN: Objection. Asked and answered.

17               THE COURT: Finish the question and I will answer  
18          the objection.

19               MR. OHM: You open the bag. You peek in to see  
20          whether there is a firearm in there or not. Your decision  
21          is not to do that, not to do that peeking because of why?  
22          What are you worried about?

23               THE COURT: The objection is overruled. You can  
24          answer the question.

25               THE WITNESS: Because the other individual that is

1 involved was per the -- the individual exchanged originally  
2 with the defendant. So the guy went from him to the  
3 defendant so assumingly, the first subject had possession,  
4 is aware of what is in the bag. Now he is watching us peer  
5 into this bag. So now he knows that we know there is a  
6 firearm in this bag. Whether or not we pulled it out, he is  
7 watching us look into it. If he's scared, you can bet he  
8 will run, fight, flee.

9 **BY MR. OHM:**

10 **Q.** Wouldn't those things also apply if he sees an  
11 individual handcuffed?

12 **A.** I think it is more likely that that would apply if  
13 he sees us looking in the backpack verifying there is a  
14 firearm in it versus having someone stopped and handcuffed.

15 **Q.** So when you decide to put somebody in handcuffs,  
16 you are not thinking about how it might trigger another  
17 individual. It is only when you are peeking into the bag?

18 **A.** It's not my -- can you ask that again?

19 **Q.** That's all right. When you say, Am I okay to  
20 search, who are you asking?

21 **A.** The rest of the units that have eyes on the  
22 location that I don't. Anyone else with the other subject.

23 **Q.** Is that when you said, you asked, Is the other  
24 individual apprehended?

25 **A.** I said -- I'm sorry?



1 Q. Do you ask on your radio if the other individuals  
2 are apprehended. If the other individual was apprehended.

3 A. Are you asking if I asked that?

4 Q. Yeah.

5 A. No, I don't.

6 Q. Okay. That is what you are waiting for according  
7 to your testimony?

8 A. What I said is, Is he good for a search? I want  
9 to know if they say yes, they are saying the scene is  
10 secure, go ahead and search it.

11 Q. So your assumption is if you say he is good for a  
12 search, they understand that that means that the scene is  
13 secure and the other person is under arrest?

14 A. No. I didn't say anything about being under  
15 arrest.

16 Q. Or Stopped. I'm sorry.

17 A. Secured.

18 Q. Okay. Is that like a predetermined code word?

19 A. No. But we all interact with each other  
20 regularly. We know how to understand each other on the  
21 scene.

22 Q. Like, for example, when you said 1-800 means gun;  
23 that's a code word?

24 A. Yes.

25 Q. So you all sat around and decided that that is

1 what 1-800 --

2 THE COURT: Mr. Ohm, let's not get close to the  
3 line of badgering the witness.

4 **BY MR. OHM:**

5 Q. All right. So in any other of your  
6 communications, either by radio or with the other officers  
7 not by radio, you never asked anybody, Hey, can you make  
8 sure you let me know when the other guy is apprehended.  
9 Right?

10 A. I don't think I said that.

11 Q. And you never told any of the other officers you  
12 felt the gun. Right?

13 A. Not that I recall.

14 Q. You didn't tell your partner that you felt the gun  
15 either. Right?

16 A. No. I don't think I verbalized that, no.

17 Q. Did you tell in any other way, in a non-verbal  
18 way?

19 A. I think she was watching me feel the bag. I can't  
20 speak to what she was thinking at that moment. I didn't  
21 give her an answer or anything.

22 Q. Just to be clear, after the jacket is taken off,  
23 you never do the experimental frisk again. Right?

24 A. No, I don't think so.

25 MR. OHM: I think that is all I have, Your Honor.

1 (Sidebar discussion off the record.)

2 MR. WASSERMAN: Briefly, Your Honor.

3 **REDIRECT EXAMINATION**

4 **BY MR. WASSERMAN:**

5 Q. Officer Poupart, good afternoon.

6 A. Good afternoon.

7 Q. You testified in reference to your initial stop  
8 with Officer Taylor of the Defendant Mr. Douglas. Is it  
9 fair to say you didn't know what was in the bag at the time  
10 that you approached him?

11 A. Correct.

12 Q. All right. And you testified previously that  
13 there was about a minute and a half from the time you heard  
14 the lookout until the time that you arrived on the scene.  
15 Do you recall saying that?

16 A. Yes.

17 Q. And at the time that you arrived on the scene,  
18 were you aware that there was also a second subject that was  
19 involved in this exchange?

20 A. Yes.

21 Q. Okay. Were you able to see what, if anything Mr.  
22 Douglas had done with the book bag from the time that he  
23 received it from Mr. Williams to the time that you first  
24 laid eyes on him over by the parking lot?

25 A. No.

1 Q. So do you know whether or not he had reached into  
2 the book bag and pulled anything out in that period of time?

3 A. I don't know.

4 Q. All right. Were you aware of whether he could  
5 have had a weapon anywhere else on his person at the time  
6 that you approached him?

7 A. I did not, no.

8 Q. About how long do you think it takes for somebody  
9 to draw a gun or weapon and use it?

10 A. Half a second to a second.

11 Q. All right. When you arrived on the scene, you  
12 testified it was you and Officer Taylor who were first on  
13 the scene. Do you recall that?

14 A. Yes.

15 Q. And Mr. Ohm showed you some of the video from your  
16 body worn camera that showed within about 50 seconds or so  
17 other officers arrived on the scene. Do you recall seeing  
18 that part of defense Exhibit No. 3?

19 MR. OHM: Objection to the characterization, Your  
20 Honor. The record will speak for itself. The Government's  
21 estimate of timing.

22 THE COURT: I'll allow the question.

23 BY MR. WASSERMAN:

24 Q. Certainly within a minute or less other officers  
25 were there; is that your recollection of that video?

1           **A.**    Yeah.

2           **Q.**    And do you know whether they were actually looking  
3 for the other subject that was part of that lookout, those  
4 officers?

5           **A.**    Yes, they were looking for the other subject.

6           **Q.**    Who was handling Mr. Douglas?

7           **A.**    Myself and my partner.

8           **Q.**    And just to be sure, with respect to -- I showed  
9 you Government's Exhibit No. 4, I think it was, your body  
10 worn camera. When you approached, do you recall seeing Mr.  
11 Douglas in the blue jacket, Mr. Williams and another third  
12 individual?

13          **A.**    Yes.

14          **Q.**    Were you aware at that time whether or not either  
15 one of those two individuals may have been the second  
16 subject that had been part of Officer Jackson's lookout?

17          **A.**    I was not aware.

18          **Q.**    Were you concerned they might be?

19          **A.**    Yes, it is possible.

20          **Q.**    Did that factor into part of your calculation in  
21 placing Mr. Douglas in handcuffs?

22               MR. OHM: Objection.

23               THE COURT: Overruled.

24               MR. WASSERMAN: Did the fact that those two  
25 individuals were there and may or may not have been part of

1 this transaction, factor into your decision to handcuff Mr.  
2 Douglas?

3 MR. OHM: Objection. Leading.

4 THE COURT: Overruled. You can answer.

5 THE WITNESS: Yeah.

6 **BY MR. WASSERMAN:**

7 Q. Mr. Ohm asked you a little bit about the pat down,  
8 that you frisked or whatever you want to call it, that you  
9 conducted. When you did the pat down or the frisk, did you  
10 -- were you able to, you know, detect that there was more  
11 than one item in there when you did the frisk?

12 A. Yes.

13 Q. And given that there was more than one item that  
14 you could feel in there, was there a point at which you --

15 MR. OHM: Objection. Leading.

16 THE COURT: Mr. Ohm, I will let him finish the  
17 question.

18 **BY MR. WASSERMAN:**

19 Q. Was there a point in which you were able to  
20 distinguish between the two items during the frisk? In  
21 other words, based on what you were feeling?

22 A. Yes.

23 Q. One distinct item and another distinct item?

24 A. Yes.

25 Q. All right. And within that period of time on

1 the -- on your body worn camera footage, while you were  
2 patting down or frisking the exterior of the jacket, were  
3 you able to determine that one of those items was a gun?

4 **A.** Yes.

5 MR. WASSERNMAN: The Court's indulgence.

6 **BY MR. WASSERMAN:**

7 **Q.** One other question. Mr. Ohm asked you a question  
8 about situations where you would not place somebody in  
9 handcuffs.

10 If you conducted a stop of somebody for  
11 jaywalking, would you put them in handcuffs?

12 **A.** For jaywalking, probably not.

13 **Q.** What about a routine traffic stop for a blinker or  
14 speeding?

15 **A.** Probably not.

16 **Q.** Okay. Without any other facts or situational  
17 facts that might cause you to be concerned for your safety;  
18 is that a fair statement?

19 **A.** Yes.

20 MR. WASSERMAN: That's all I have.

21 THE COURT: Thank you, Officer. Thank you for  
22 your time. You are excused. Thank you for your testimony  
23 today.

24 THE WITNESS: Thank you, Your Honor.

25 THE COURT: The Government has no additional

1 evidence at this point.

2 THE COURT: Mr. Ohm?

3 MR. OHM: Your Honor, Mr. Douglas would like to  
4 call Officer Taylor.

5 THE COURT: Officer Taylor, can you hold on one  
6 second. In case you want to wipe down the witness stand.  
7 We will wipe it down for you.

8 THE WITNESS: Thank you.

9 CLERK: Please raise your right hand. Do you  
10 solemnly swear to tell the truth, the whole truth and  
11 nothing but the truth so help you God?

12 THE COURT: Officer Taylor, thank you for wearing  
13 a mask. I think it is fair to say we found wearing a mask  
14 is more effective than wearing a face shield. If you would  
15 prefer to wear a face shield while you testify, that is a  
16 possibility as well. During our hearing today we concluded  
17 that so long as you speak into the microphone and are not  
18 too fast, we can understand you just fine with the face mask  
19 on, if that's okay with you.

20 THE WITNESS: Sounds good.

21 THE COURT: Thank you.

22 **DIRECT EXAMINATION**

23 **BY MR. OHM:**

24 **Q.** Good afternoon, Officer.

25 **A.** Good afternoon.



1 Q. Could you please state your name and spell it for  
2 the court reporter?

3 A. Brianna Taylor. B-r-i-a-n-n-a, T-a-y-l-o-r.

4 Q. How are you employed?

5 A. The Metropolitan Police Department as an officer.

6 Q. How long have you been with the MPD?

7 A. Eight years in February.

8 Q. And do you have a partner?

9 A. Some days. It just depends.

10 Q. And on April 2nd, 2020, did you have a partner?

11 A. Yes.

12 Q. Who was that?

13 A. Officer Poupart.

14 Q. Have you worked together before?

15 A. Yes.

16 Q. Are you on the same team?

17 A. Yes. Were, yes.

18 Q. So even when you didn't work as partners, you also  
19 often worked together; is that fair?

20 A. That's fair.

21 Q. Okay. I want to show you what I am marking as  
22 defense 4.

23 THE COURT: Defendant Douglas' 4.

24 MR. OHM: Defendant Douglas' 4. Thank you, Your  
25 Honor.

1 (Defendant Douglas' Exhibit No. 4 was marked for  
2 identification.)

3 **BY MR. OHM:**

4 **Q.** Does this scene look familiar to you?

5 **A.** Yes, it does.

6 **Q.** Do you see the writing in the top-right corner of  
7 the exhibit?

8 **A.** Yes.

9 **Q.** What is this?

10 **A.** The body cam information.

11 **Q.** If I play it right now, it is at 1:33, the first  
12 minute of the body worn camera footage, what is that  
13 usually?

14 **A.** Whatever you are doing prior to after putting on  
15 your body worn camera.

16 **Q.** This is activated footage. Is that fair?

17 **A.** Yes.

18 (Played video.)

19 **Q.** Do you recognize this?

20 **A.** Can you play a little more?

21 **Q.** Sure. Whose body worn camera footage is this?

22 **A.** It appears to be mine.

23 **Q.** Who is the officer on the left?

24 **A.** Officer Poupart.

25 **MR. OHM:** Your Honor, I would move in Defendant

1 Douglas' 4.

2 MR. WASSERMAN: No objection.

3 THE COURT: So admitted.

4 (Defendant Douglas' Exhibit No. 4 was admitted.)

5 **BY MR. OHM:**

6 Q. Okay. Did you hear that? I'm sorry. How do you  
7 pronounce his name?

8 A. Poupart.

9 Q. Did you hear Officer Poupart there?

10 A. Yes.

11 Q. What did he say?

12 A. I believe he asked him, do you mind if he checked  
13 the bag.

14 Q. What do you think Officer Poupart means when he  
15 says that?

16 MR. WASSERMAN: Objection.

17 THE COURT: Sustained.

18 **BY MR. OHM:**

19 Q. Have you worked with Officer Poupart on street  
20 encounters before?

21 A. Yes.

22 Q. Have you worked with Officer Poupart when he  
23 searched an individual before?

24 A. Yes.

25 Q. Okay. Does Officer Poupart routinely ask if he

1 has permission to search?

2 A. I believe.

3 Q. It isn't routine?

4 A. I don't think anything is routine in terms of --

5 Q. Has Officer Poupart ever expressed to you that he  
6 likes to give people an opportunity?

7 A. We never discussed it before.

8 Q. Okay. And in terms of you being partnered up,  
9 would you say that that's happened more than -- how many  
10 times do you think that that's happened?

11 A. Um, I am not sure. We have been partners for six  
12 months detailed --

13 Q. So multiple times a week?

14 A. Twice.

15 Q. For the last six months?

16 A. Yes.

17 (Playing video.)

18 Q. Did you hear Mr. Douglas say, You can't check it.  
19 It's just glasses?

20 A. Can you play it back, please?

21 Q. Sure. You heard him say, No, you can't check it.  
22 Right?

23 A. Yes.

24 Q. Now, at this point Officer Poupart hasn't opened  
25 it up yet. Why is that?

1           **A.**    I am not sure. I am not sure why he did not open  
2           the backpack.

3           **Q.**    Okay. Did he express to you what he was waiting  
4           for?

5           **A.**    No, he did not.

6           **Q.**    And just so -- we are at 19:04:24. Do you see  
7           four fellow officers in the background there?

8           **A.**    Yes.

9           **Q.**    How many people were on the arrest team that day?

10          **A.**    I am not sure.

11          **Q.**    More than 10?

12          **A.**    I am not sure.

13          **Q.**    At least five and the two of you though. Right?

14          **A.**    That's what I see. That would be fair.

15          **Q.**    Just so we can see, there are five on the right  
16          side of the exhibit. We are at 19:04:30. And two towards  
17          the middle of the exhibit, as well as the two of you.  
18          Right?

19          **A.**    Yeah.

20          **Q.**    Would it be fair to say that these officers are  
21          all sort of facing the three of you and not really doing  
22          anything else other than sort of supporting you guys?

23          **A.**    Which officers?

24          **Q.**    The officers in the background.

25          MR. WASSERMAN: Your Honor, I am just going to

1 object to leading the witness.

2 THE COURT: Overruled. You can answer the  
3 question.

4 **BY MR. OHM:**

5 Q. Starting at 19:04:35. I will play for a few  
6 seconds. If you could keep an eye on the other officers. I  
7 am stopping at 19:04:41. Is it fair to say that those  
8 officers are in support of you and Officer Poupart?

9 A. That would be fair to say.

10 (Playing video.)

11 Q. At that point did you hear Officer Poupart say,  
12 Are we good for a search?

13 A. I didn't hear that.

14 Q. Let's go back. Did you hear that?

15 A. I heard the word search.

16 Q. You heard Officer Poupart. Right?

17 A. Yes.

18 Q. Do you know what that meant?

19 A. Search. To do a search.

20 Q. I will show you Officer Poupart --

21 MR. OHM: This is marked as defense 3, Your  
22 Honor.

23 (Playing video.)

24 I'm sorry. Did you hear it there?

25 (Playing video.)

1 THE COURT: Mr. Ohm, I think you are confusing the  
2 time on the file with the time of the actual time. You need  
3 to go back.

4 MR. OHM: Okay. Thank you, Your Honor.

5 **BY MR. OHM:**

6 Q. Okay. Defense Exhibit 3 at 19:04:58, did you hear  
7 Officer Poupart?

8 A. Yes.

9 Q. Did you hear him say, are we good for a search?

10 A. Yes.

11 Q. Have you worked with Officer Poupart before? What  
12 did you think of that to mean?

13 A. What did I think in terms of?

14 Q. What did you take it to mean in terms of his  
15 question, Are we good for a search? What does that mean?

16 MR. WASSERMAN: I am going to object to the  
17 relevance of that question.

18 THE COURT: Overruled.

19 THE WITNESS: To my knowledge, is the individual  
20 good to be searched.

21 **BY MR. OHM:**

22 Q. Okay. He was asking if the individual was good to  
23 be searched?

24 A. Yes.

25 Q. Okay. Was there any other meaning behind that

1 question that you know of?

2 A. Not to my knowledge.

3 Q. Okay. Just very briefly. Would you say at the  
4 time that you apprehended Mr. Douglas, was he entirely  
5 cooperative?

6 A. The entire account or?

7 Q. As you approached him and as you encountered him,  
8 did he ever try to flee, argue or threaten?

9 A. When we stopped him? No, he did not.

10 Q. Did you see any other individuals there?

11 A. No.

12 Q. When you stopped Mr. Douglas, initially were there  
13 other individuals there acting in a threatening manner  
14 towards you?

15 A. Honestly, I can't recall. There were residents I  
16 am assuming coming out, but nobody was in an aggressive  
17 manner. There were quite a few officers on the scene.

18 Q. So you didn't have anyone threaten you or pull a  
19 gun on you or anything like that?

20 A. No.

21 Q. Okay. I mean, if you saw somebody you suspected  
22 had a gun, officers actually apprehend them. Right?

23 A. Yes.

24 MR. OHM: No further questions, Your Honor.

25 THE COURT: Mr. Wasserman.



1 MR. WASSERMAN: Briefly, Your Honor.

2 **CROSS EXAMINATION**

3 **BY MR. WASSERMAN:**

4 Q. Good afternoon, Officer Taylor.

5 A. Good afternoon.

6 Q. Do you remember when you first started working at  
7 NSID?

8 A. I believe it was February, 2020.

9 Q. February. Was it sort of a detail?

10 A. Yes.

11 Q. And when did you -- where were you assigned  
12 before?

13 A. The sixth district.

14 Q. How long have you been with MPD?

15 A. It will be eight years in February.

16 Q. Have you been at 6D the whole time?

17 A. Aside from other details, yes.

18 Q. Okay. And what is your position in patrol?  
19 Crimes? Correction?

20 A. I am patrol.

21 Q. Okay. And when did you -- you started in NSID in  
22 February of 2020. When did you finish up with that detail?

23 A. I believe it was August, mid-August.

24 Q. Mid-August of this year?

25 A. Yes. I'm sorry. 2020.

1 Q. So prior to your assignment with NSID, had you  
2 worked with Officer Poupart before?

3 A. No.

4 Q. And was he your partner the whole time you were in  
5 NSID or did you guys switch around?

6 A. We kind of switched around.

7 Q. All right. So as far as actually -- when you say  
8 "partner", does that mean you ride in the same car together  
9 essentially?

10 A. Essentially.

11 Q. And responding to calls together?

12 A. Yes.

13 Q. Okay. So during that six-month period, is it  
14 correct to say that, you know, sometimes you worked with him  
15 as your partner. Sometimes you might have worked with him,  
16 but he wasn't right there with you as your partner?

17 A. Yes.

18 Q. Okay. Do you happen to recall -- let me,  
19 actually, ask if we can play Government's Exhibit No. 4  
20 starting at the 6-minute mark.

21 Before we do that, do you recall getting a lookout  
22 over the radio to respond to the 2300 block of 15th Street  
23 that day?

24 A. Yes. Yes.

25 Q. All right.

1 MR. WASSERMAN: Government's Exhibit 3 at the  
2 6-minute mark.

3 (Played audio.)

4 **BY MR. WASSERMAN:**

5 Q. Do you recall, was that the lookout that you and  
6 Officer Poupart responded to that day?

7 A. Yes.

8 Q. In that lookout, it was for two individuals; is  
9 that correct?

10 A. Yes, yes.

11 Q. All right. And have you worked narcotics and  
12 firearm cases before in terms of investigations? Come  
13 across people who have been selling drugs?

14 A. Yes.

15 Q. All right. In your eight-year career; is that  
16 correct?

17 A. Yes.

18 Q. Okay. And in your training and experience, is it  
19 common for people engaged in drug trafficking to carry  
20 firearms or other weapons?

21 A. Yes.

22 Q. Is that a concern of yours as an eight-year police  
23 officer when you approach somebody in the type of situation  
24 where you approached Mr. Douglas?

25 A. Yes.

1           **Q.**   And on the day of April 22nd, the day you and  
2           Officer Poupart approached Mr. Douglas, is it correct that  
3           you were aware that there was another individual that was  
4           suspected of being involved in this exchange?

5           **A.**   Yes.

6           **Q.**   Did you know where that individual was at the time  
7           that you approached Mr. Douglas?

8           **A.**   No.

9           **Q.**   And when you and Officer Poupart arrived on the  
10          scene and approached Mr. Douglas, were you the first  
11          officers on the scene?

12          **A.**   Yes.

13          **Q.**   Did you know where the other officers were when  
14          you first made contact with Mr. Douglas?

15          **A.**   No.

16          **Q.**   Do you know how long it was going to take them to  
17          arrive in that area?

18          **A.**   No.

19          **Q.**   If I could ask -- all right. I am showing you  
20          Government's Exhibit 4-A. Officer Taylor, do you recall  
21          that particular still shot? Is that from Officer Poupart's  
22          body worn camera footage?

23          **A.**   I am not sure.

24          **Q.**   You are are not sure. Do you recognize the  
25          individual in the blue coat?

1           **A.**    Yes.

2           **Q.**    Who is that?

3           **A.**    That is the individual that we did the search  
4 with.

5           **Q.**    Okay. Do you see anybody else in that photograph?

6           **A.**    Yes.

7           **Q.**    At the time that you stopped Mr. Douglas, do you  
8 know who those other individuals were?

9           **A.**    No.

10           MR. WASSERMAN: That's all I have, Your Honor.  
11 Thank you.

12           THE COURT: Thank you.

13           Mr. Ohm, any redirect?

14           MR. OHM: No, Your Honor.

15           THE COURT: Thank you, Officer. You are excused.

16           THE WITNESS: Thank you.

17           THE COURT: So counsel, here is where I am. I  
18 don't want to hear argument on the motions. We have the  
19 evidence now. I think it is closed. Correct me if that's  
20 not the case.

21           MR. OHM: I don't remember if I moved in my  
22 exhibits. I know they are duplicate of the Government  
23 exhibits.

24           CLERK: You did not do 1 through 3.

25           THE COURT: It looks like maybe not. Why don't

1     you move in -- it looks like you need to move in Defendant  
2     Douglas' Exhibits 1, 2 and 3. I don't believe there were  
3     objections, since they were Government exhibits so we will  
4     admit them.

5             (Defendant Douglas' Exhibit Nos. 1-3 were  
6     admitted.)

7             MR. WASSERMAN: No, Your Honor.

8             THE COURT: So we have the evidence. I don't want  
9     to hear argument today on the motions.

10            Here is what I think is the most efficient course.  
11     We've heard something like five hours of testimony today. I  
12     think the best course is for parties to take the evidence  
13     that we heard today and file supplemental briefs on the  
14     motions.

15            So I am open to whatever proposal you have. I am  
16     thinking of something relatively concise. They need not be  
17     an exchange of briefs. I want to keep this case moving. I  
18     am thinking about each party getting a supplemental brief of  
19     X-number of pages to tell me the most relevant evidence that  
20     we heard today as it relates to the arguments that have been  
21     presented already.

22            The reason I think it is complicated because, of  
23     course, the Government has a position on two of the motions  
24     we heard evidence on today. There are the defendants who  
25     are on different positions. I think the fair way to do it

1 is on the motions to suppress the identification testimony,  
2 each party gets to file a 10-page supplemental brief,  
3 basically, arguing whatever you want to argue on the  
4 evidence today with citations to the record.

5 And then as to the motion to suppress, the  
6 tangible evidence, on that one, Defendant Douglas and the  
7 Government get 10-page briefs presenting whatever arguments  
8 you want to make based on the evidence we heard today. The  
9 briefs will be filed simultaneously. I don't think we need  
10 to have -- I have already read the legal arguments. I just  
11 want to understand the synthesis of the evidence as it  
12 relates to various positions. I will have the Government go  
13 first or vice versa. That's how I want to proceed. The  
14 question for you is, When is an appropriate time for you to  
15 file these briefs?

16 Obviously, you heard the evidence today, and  
17 obviously you will need the transcript to cite it. So  
18 there's that question. And I don't know what your schedules  
19 are like. With the goal in mind of resolving this quickly,  
20 I want to give you the opportunity to put your best foot  
21 forward.

22 That's how I would like to proceed. The only  
23 question being, When would you like to file these  
24 supplemental briefs? Obviously, the Government has two to  
25 file. Mr. Marston one. So the question is probably to Mr.

1 Ohm and Mr. Wasserman, what do you want to file?

2 Mr. Marston, you can object if you don't like their  
3 proposal. Feel free to approach.

4 MR. WASSERMAN: Your Honor, I guess the only issue  
5 is when we would get the transcript. We can order it daily  
6 I suppose. I don't know how long. I have permission to do  
7 that. I don't think it is a problem. Assuming I can get  
8 the transcript.

9 May I confer with the court reporter?

10 THE COURT: You may.

11 MR. WASSERMAN: I know it is a pretty lengthy  
12 transcript. How long do you think you might be able to get  
13 it completed?

14 COURT REPORTER: Um, two days.

15 MR. WASSERMAN: I just want to look at my  
16 schedule, Your Honor. Is two weeks --

17 THE COURT: That's acceptable from my perspective.  
18 I think something can be done before you get the transcript  
19 just to make whatever argument, whatever the lawyers will  
20 testify to.

21 MR. WASSERMAN: November 5th or 6th?

22 THE COURT: Let me hear from Mr. Ohm, whose client  
23 is in the most time sensitive position. Mr. Ohm?

24 MR. OHM: Your Honor, I am leaning towards only  
25 filing the Fourth Amendment one.



1 THE COURT: I understand.

2 MR. OHM: So I am -- a week -- a week from the two  
3 days is fine with me. I know everyone is busy.

4 THE COURT: Why don't we do October 30th. It's  
5 not quite two weeks. I know Mr. Wasserman, it's more than a  
6 full week after the transcripts are available, and we have  
7 the rest of this week to at least --

8 MR. WASSERMAN: Your Honor, I apologize. I've got  
9 compassionate release motion I have to respond to by the  
10 28th. I've got to go to Grand Jury on another case on the  
11 27th. I just have a few balls in the air here that I am  
12 trying to balance.

13 The more time I could get, I think, the more  
14 realistic it would be for me.

15 THE COURT: Let's do November 3rd. Two weeks from  
16 today and that's not quite two weeks from the transcript but  
17 that's how we are going to proceed.

18 Mr. Ohm, feel free to respond if you like. I  
19 understand you may only file the Fourth Amendment. Again,  
20 each party can file. The Government can file two briefs,  
21 supplemental briefs, each of no more than 10 pages on the  
22 two motions to suppress. Mr. Ohm, Mr. Douglas, can file one  
23 or two supplemental briefs on those motions, and Mr.  
24 Williams can file one supplemental brief on the motion, the  
25 motion to suppress that he has filed. And those briefs are

1 due two weeks from today, which is November 3rd. I will not  
2 impose a time deadline.

3 Anything else we should discuss today, Counsel?

4 MR. WASSERMAN: Is the Court going to decide the  
5 -- [inaudible] -- will be on papers --

6 THE COURT: Yes. Well, I guess I should say, I  
7 don't know yet. What I want to do is I want to see -- to be  
8 clear, I want to see the parties' respective positions on  
9 these motions, especially the motion to suppress the  
10 tangible motions. I may decide to hear arguments on them  
11 and possibly on the other motions. I tend to think that  
12 those can be resolved in the papers, but I really want to  
13 see how you synthesize the questions here today, and it may  
14 be that depending on how the suppression motions come out.

15 I think the better course is to decide after you  
16 file those things whether I want to have argument at all if  
17 -- and if so, on what issues? And, of course, if we  
18 schedule argument, I will make everybody aware of what I  
19 intend. Thank you for the question.

20 MR. WASSERMAN: Very well, Your Honor.

21 MR. MARTSON: Nothing from Mr. Williams.

22 THE COURT: Thank you, Counsel.

23 CLERK: All rise.

24 (Proceedings concluded at 4:37 p.m.)  
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CERTIFICATE

1 I, Lorraine T. Herman, Official Court  
2 Reporter, certify that the foregoing is a true and correct  
3 transcript of the record of proceedings in the  
4 above-entitled matter.

5  
6 Please Note: This hearing occurred during  
7 the COVID-19 pandemic and is therefore subject to the  
8 limitations of court reporting mask wearers.

9  
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11  
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13  
14 October 21, 2020  
DATE

/s/  
Lorraine T. Herman

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

TAVONTE WILLIAMS AND  
THEODORE B. DOUGLAS  
Defendants.

CR Action  
No. 1:20-121

Washington, DC  
March 9, 2021

3:10 p.m.

TRANSCRIPT OF TELEPHONE STATUS CONFERENCE/GUILTY PLEA  
BEFORE THE HONORABLE CARL J. NICHOLS  
UNITED STATES DISTRICT JUDGE

APPEARANCES:

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Reported By: LORRAINE T. HERMAN, RPR, CRC  
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P R O C E E D I N G S

THE COURT: Good afternoon, everyone. Assuming everyone can hear me, Ms. Lesley, could you please call this matter?

COURTROOM DEPUTY: Yes, Your Honor. This is criminal case year 2020-121, Tavonte Williams Defendant number 1 and Theodore Douglas Defendant number 2, both who are present by video.

MR. WASSERMAN: Good afternoon, Your Honor. Steven Wasserman on behalf of the United States.

THE COURT: Mr. Wasserman, good afternoon.

MR. MARSTON: John Marston for Tavonte Williams.

THE COURT: Mr. Marston.

MR. OHM: Gene Ohm on behalf of Theodore Douglas.

THE COURT: Good afternoon. I note Mr. Williams and Mr. Douglas are on the video.

We obviously have a number of topics to cover. My plan, but please tell me, Mr. Marston, if you have a problem with this, is to do the plea hearing first. And then after we've done that, we can talk about how that impacts the schedule of the case and the like. But if you would like to take it in a different order, let me know.

MR. MARSTON: This is Mr. Marston. That sounds good, Your Honor. Thank you.

THE COURT: Okay. Thank you.

1                   So I understand that Mr. Douglas would like to  
2                   enter a plea of guilty to the 922(g)(1) charge; is that  
3                   correct, Mr. Ohm?

4                   MR. OHM:   Yes, Your Honor.

5                   THE COURT:   So before we proceed to take the plea  
6                   today, I need to address a preliminary matter, which is to  
7                   acknowledge the unique nature of today's hearing in light of  
8                   the pandemic. Ordinarily, of course, we would conduct this  
9                   plea in person, but during the pandemic, Congress has  
10                  authorized federal judges to take felony guilty pleas by  
11                  video or teleconference so long as after consulting with  
12                  counsel the Defendant consents and the judge finds the plea  
13                  in the case cannot be further delayed without serious harm  
14                  to the interest of justice.

15                 Mr. Douglas, after consulting with Mr. Ohm, have  
16                 you decided that further delay is inappropriate and that you  
17                 would like to resolve this matter as promptly as possible  
18                 and without the risks that attend being physically present  
19                 in the courtroom during the COVID-19 pandemic?

20                 THE DEFENDANT:   Yes, sir, Your Honor.

21                 THE COURT:   And, Mr. Ohm, do you agree the  
22                 interests of justice would be seriously harmed by further  
23                 delay and that we should therefore proceed with this plea  
24                 hearing by video?

25                 MR. OHM:   Yes, Your Honor.

1           THE COURT: I find that because Mr. Douglas, after  
2 consulting with counsel, consents to proceed by  
3 videoconference and with the interest of justice being  
4 seriously harmed by further delay, that it is appropriate to  
5 proceed by video.

6           Incidentally, Mr. Wasserman, I assume you agree  
7 that we should proceed by video today?

8           MR. WASSERMAN: Yes, Your Honor.

9           THE COURT: Ms. Lesley, could you please  
10 administer the oath to Mr. Douglas?

11          COURTROOM DEPUTY: Mr. Douglas, please raise your  
12 right hand. Do you solemnly swear that you will well and  
13 truly answer all questions propounded to you, so help you  
14 God?

15          THE DEFENDANT: Yes, I do.

16          COURTROOM DEPUTY: Thank you.

17          THE COURT: Mr. Douglas, the purpose of this  
18 hearing is to allow you to enter into a plea of guilty to  
19 the charge against you. Because this is an important  
20 decision, it is vital you understand what rights you will  
21 give up by entering a guilty plea. I will ask you a series  
22 of questions to make sure that the guilty plea is knowing  
23 and voluntary and with the advice of your attorney. If you  
24 don't understand any of the questions, please tell me. I'll  
25 try to explain things more clearly or I will let you consult



1 with Mr. Ohm. If you don't ask for clarification, I will  
2 assume you understand the questions and discussions. You  
3 are under oath now and you are obligated to answer all  
4 questions truthfully. If you are not truthful, and the plea  
5 should fall apart, the Government may be able to use some of  
6 your statements against you in a later proceeding or  
7 separate prosecution for perjury or making a false  
8 statement.

9 **BY THE COURT:**

10 Q. Mr. Douglas, what is your full name?

11 A. Theodore Bernard Douglas, III.

12 Q. How old are you, Mr. Douglas?

13 A. Thirty years old.

14 Q. Were you born in the United States?

15 A. Yes.

16 Q. Are you sick or impaired in any way that could  
17 prevent you from understanding what is happening here today?

18 A. No.

19 THE COURT: Mr. Ohm, do you have any reason to  
20 believe your client will be unable to understand what we are  
21 discussing here today?

22 MR. OHM: No, Your Honor.

23 **BY THE COURT:**

24 Q. Mr. Douglas, have you had enough time to discuss  
25 things with your attorney?

1           **A.**    Yes.

2           **Q.**    Have you received a copy of the indictment against  
3 you, which is the written charge made against you in this  
4 case?

5           **A.**    Yes.

6           **Q.**    Have you had the opportunity to discuss with Mr.  
7 Ohm the charge against you and whether you should enter a  
8 plea today?

9           **A.**    Yes.

10          **Q.**    Are you satisfied with the services of Mr. Ohm in  
11 this matter?

12          **A.**    Yes.

13                THE COURT: Mr. Ohm, have you had enough time to  
14 review and investigate the law and facts in this case?

15                MR. OHM: Yes, Your Honor.

16                THE COURT: I find the Defendant Mr. Douglas is  
17 responding appropriately to my questions and appears to  
18 understand them fully. I find he is competent and capable  
19 of entering an informed plea.

20    **BY THE COURT:**

21           **Q.**    Mr. Douglas, before I accept your plea, I need to  
22 explain the rights you have in this matter and confirm that  
23 you understand them. Please listen closely again, and  
24 please let me know if you don't understand anything or need  
25 to speak with Mr. Ohm privately, which we could arrange in a

1 separate, private videoconference. I will now discuss your  
2 right to a jury trial and an appeal.

3 Do you understand, Mr. Douglas, that you have the  
4 right to plead not guilty to any offense charged against  
5 you?

6 **A.** Yes.

7 **Q.** Do you understand you have a right to challenge  
8 the Government's case against you in a jury trial where 12  
9 citizens of the District of Columbia would sit as a jury and  
10 determine whether you were guilty based on evidence  
11 presented in the courtroom?

12 **A.** Yes.

13 **Q.** Do you understand that if you were to go to trial,  
14 you would have the right to be represented by your lawyer at  
15 that trial and at every stage of the proceeding?

16 **A.** Yes.

17 **Q.** Do you understand that if you were to exercise  
18 your right to a trial, you would have the right to confront  
19 and cross examine any of the Government's witnesses who  
20 testify against you?

21 **A.** Yes.

22 **Q.** Do you understand that if you were to exercise  
23 your right to a trial, you would have the right to present  
24 your own witnesses and the right to subpoena them and  
25 require them to testify in your defense?

1           **A.**    Yes.

2           **Q.**    Do you understand that at a trial you would have  
3           the right to testify and present evidence on your behalf,  
4           but only if you wanted to.  If you did not want to testify  
5           or present evidence, you would not have to do so?

6           **A.**    Yes.

7           **Q.**    Do you understand that unless and until I accept  
8           your guilty plea, you are presumed innocent under the law  
9           unless if you were to choose to go to trial, the Government  
10          would have the burden of proving you were guilty beyond a  
11          reasonable doubt?

12          **A.**    Yes.

13          **Q.**    Do you understand that if you choose to go to  
14          trial and are convicted, you would have the right to appeal  
15          your conviction and to have a lawyer prepare your appeal,  
16          but that by pleading guilty, you are giving up many of your  
17          rights to appeal your conviction and sentence with some  
18          limited exceptions?  Do you understand that?

19          **A.**    Yes.

20          **Q.**    Do you understand that you are waiving the right  
21          to appeal your conviction; that you could not later try to  
22          appeal your conviction and argue, for example, that the  
23          statute to which you are pleading guilty is unconstitutional  
24          or that the conduct you engaged in did not fit within the  
25          scope of the statute?  Do you understand all of that?

1           **A.**    Yes.

2           **Q.**    Do you understand you are generally waiving the  
3 right to appeal your sentence, which means you can't appeal  
4 your prison term, the fine, forfeiture, award of  
5 restitution, term or condition of supervised release, my  
6 authority to set the condition of release or how I  
7 determined your sentence with some limited exceptions that I  
8 will get to? Do you understand all of that?

9           **A.**    Yes.

10          **Q.**    So as I mentioned, there are some limited  
11 exceptions to the waiver of your appeal rights. You can  
12 appeal the sentence, if I sentence you above the statutory  
13 maximum or the advisory guidelines range, and you could also  
14 appeal the conviction and sentence on the basis that your  
15 lawyer was ineffective. Do you understand that you will  
16 retain those appeal rights?

17          **A.**    Yes.

18          **Q.**    So, Mr. Douglas, do you understand that you are  
19 largely giving up your rights if you plead guilty today?

20          **A.**    Yes.

21          **Q.**    Do you still wish to plead guilty and give up all  
22 of the rights that we have discussed?

23          **A.**    Yes.

24                MR. WASSERMAN: Your Honor, this is Steven  
25 Wasserman. I just wanted to make sure it was clear on the

1 record that Mr. Douglas is preserving his right to appeal  
2 the denial of his Motion to Suppress, which is included in  
3 the terms of the plea agreement.

4 THE COURT: Okay. Thank you, Mr. Wasserman. Mr.  
5 Ohm, do you agree that Mr. Douglas is, in fact, preserving  
6 his right to appeal the denial of his Motion to Suppress?

7 MR. OHM: Yes, Your Honor, it is set forth on Page  
8 4 of the plea agreement.

9 THE COURT: Thank you, Mr. Wasserman.

10 MR. WASSERMAN: Yes, Your Honor.

11 **BY THE COURT:**

12 Q. Mr. Douglas, do you understand you are giving up  
13 your right to appeal my decision with respect to your Motion  
14 to Suppress?

15 A. Yes.

16 THE COURT: Thank you, Mr. Wasserman, for that  
17 clarification.

18 **BY THE COURT:**

19 Q. I will hold up what appears to be a signed waiver  
20 of a trial by jury form. Does this document contain your  
21 signature?

22 A. Yes, Your Honor.

23 THE COURT: Mr. Ohm, is there any reason Mr.  
24 Douglas should not waive jury trial -- [inaudible]

25 MR. OHM: I'm sorry, Your Honor. I didn't really

1 hear the last part.

2 THE COURT: That's okay. There is some background  
3 noise somewhere. Let me say it again.

4 Mr. Ohm, is there any reason Mr. Douglas should  
5 not waive his right to a jury trial and his right against  
6 self-incrimination to a charge to which a guilty plea will  
7 be made?

8 MR. OHM: No, Your Honor.

9 THE COURT: I find that the waiver of a trial by  
10 jury is knowingly and voluntarily made and it is accepted.  
11 The signed waiver will be filed.

12 Mr. Douglas, before I can accept your guilty plea,  
13 I must first determine that there was a factual basis for  
14 the plea. The Government has provided a document called the  
15 Statement of Offense that describes what the Government  
16 would be prepared to prove at trial. Mr. Wasserman, could  
17 you summarize the Statement of the Offense and the elements  
18 of charges, please?

19 MR. WASSERMAN: With respect to the elements of  
20 the offense of unlawful possession of a firearm by a person  
21 convicted of a crime punishable by imprisonment for a term  
22 exceeding one year in violation of 18 US Code, Section  
23 922(g)(1), the first element is that the Defendant knowingly  
24 possessed a firearm and/or ammunition; secondly, at the time  
25 of the charged act, the Defendant had previously been

1 convicted in a court of a crime punishable by imprisonment  
2 for a term exceeding one year; three, at the time of the  
3 charged act, the Defendant knew that he had previously been  
4 convicted in a court of a crime punishable by a term  
5 exceeding one year, and finally, that the firearm or  
6 ammunition had been transported in interstate commerce.

7           If this case had proceeded to trial, the  
8 Government's evidence would have established that on April  
9 22nd of 2020 officers of the Metropolitan Police Department  
10 were conducting an observation post in the 2300 block of  
11 15th Street, Northeast, Washington, D.C. An undercover  
12 officer observed the Defendant, Mr. Douglas, standing in a  
13 walkway in that block, at which time the undercover officer  
14 would testify that an individual, later identified as  
15 Tavonte Williams, approached Mr. Douglas and handed Mr.  
16 Douglas a black backpack with shoulder straps. Mr. Douglas  
17 ultimately put this bag onto his back and put his jacket on  
18 over the bag.

19           The undercover observed Mr. Douglas hand Mr.  
20 Williams an unidentified object. The undercover officer  
21 then alerted officers from the arrest team to move in and  
22 stop both Mr. Douglas and Mr. Williams. Both defendants  
23 were ultimately stopped separately and positively identified  
24 by the undercover officer as the individuals previously  
25 observed exchanging the backpack and an unidentified object.



1 Mr. Douglas was found to be wearing the backpack  
2 under his jacket as observed by the undercover. The officer  
3 who stopped Mr. Douglas conducted an external frisk of the  
4 backpack worn by Mr. Douglas, and a later search of the  
5 backpack revealed the presence of a firearm inside of the  
6 backpack. Mr. Douglas was placed under arrest. The firearm  
7 was recovered from the backpack and determined to be a Sig  
8 Sauer model P320, .40 caliber, semi-automatic, obliterated  
9 serial number. When the firearm was recovered, it was also  
10 loaded with 13 rounds in the magazine. And these events,  
11 with respect to the stop and search of Mr. Douglas, were  
12 captured on body worn camera by the police.

13 Mr. Douglas would acknowledge and admit that at  
14 the time that he possessed the loaded .40 caliber,  
15 semi-automatic pistol, he had been previously convicted of  
16 an offense for which the penalty was greater than one year  
17 of imprisonment. Specifically, carrying a handgun in the  
18 Circuit Court of Prince George's County, Maryland, case  
19 number CT090351X, an unlawful possession of firearm in D.C.  
20 Superior Court, case number 2013-CF1-6028.

21 Mr. Douglas also agrees and acknowledges at the  
22 time he possessed this firearm, he was aware that he had a  
23 previous conviction for an offense, which the penalty was  
24 greater than one year imprisonment. And the Government's  
25 evidence at trial would establish that the firearm and

1 ammunition had been shipped or transported from one state to  
2 another; and that the firearm was capable of expelling a  
3 projectile by means of an explosive.

4 THE COURT: Thank you, Mr. Wasserman.

5 **BY THE COURT:**

6 Q. Mr. Douglas, I am holding up for the video camera  
7 a document entitled Statement of the Offense. There is what  
8 appears to be your signature on the last page. Mr. Douglas,  
9 have you read this document entitled Statement of the  
10 Offense and discussed it fully with Mr. Ohm?

11 A. Yes.

12 Q. Is that your signature on the last page  
13 acknowledging that have you read the description of the  
14 criminal conduct and fully understand it?

15 A. Yes.

16 Q. And does the Statement of the Offense truly and  
17 accurately describe what you did in this case?

18 A. Yes.

19 Q. Are there any corrections or changes you would  
20 make to the Statement of the Offense?

21 A. Well, no. No, Your Honor, I can't say right now,  
22 no.

23 Q. Do you wish to confer with your counsel?

24 A. Yes, if I can do that real quick.

25 THE COURT: I'd rather not have you speak publicly

1 if you wish to confer with Mr. Ohm. Ms. Lesley, can you put  
2 Mr. Ohm and Mr. Douglas on a sidebar or whatever we call it,  
3 in a separate room on the videoconference so that they can  
4 confer in a non-public setting?

5 (Discussion off the record.)

6 MR. OHM: Thank you, Your Honor. I appreciate it.  
7 I'm embarrassed to say that I didn't catch this.

8 Mr. Douglas points out that within the plea  
9 agreement on Page 7, under Paragraph 10, that the serial  
10 numbers listed for the firearm, but in the estimated  
11 guideline range that he is acknowledging -- he is being  
12 asked to acknowledge an obliterated serial number. He did  
13 want to ask of that. I spent a couple minutes trying to  
14 look at the photos that we have been provided in discovery.  
15 The photographs we have are of the other side, so I couldn't  
16 tell one way or the other. So that's the issue we are  
17 trying to resolve.

18 MR. WASSERMAN: Your Honor, it's my understanding  
19 that the Department of Forensic Services was able to raise  
20 the serial number. Although I don't have photos of the  
21 seized gun that have the serial number exposed or where the  
22 obliteration of the serial number is exposed; that was my  
23 understanding, since the police reports indicated that the  
24 serial number was obliterated and ultimately DFS, when they  
25 did their report, provided a serial number when they

1 processed the firearm.

2 In order for me to, I guess, verify that, I would  
3 have to probably go back and talk to somebody at DFS,  
4 because -- I don't know that it's entirely clear from the  
5 paperwork that I have.

6 THE COURT: So what do you or Mr. Ohm propose we  
7 do today? Obviously, it seems consistent, in my view, that  
8 you could have a pistol or firearm where the serial number  
9 was obliterated to the normal, naked eye or at least  
10 attempted to be obliterated, but then after significant  
11 forensic work the serial number was able to be discerned.  
12 So conceptually it sure seems possible to me. But I think  
13 we need to be pretty clear about the facts here. It seems  
14 like the record is going to be really kind of conjectural at  
15 the moment.

16 Mr. Ohm or Mr. Wasserman, what do you propose we  
17 do on this question?

18 MR. WASSERMAN: Um, what I would have to do is --  
19 because I don't know that I've got -- I'd have to see if I  
20 can identify a photograph that I have that, you know,  
21 essentially shows the serial number or the obliteration of  
22 the serial number and provide it to Mr. Ohm. I don't know  
23 that I have that, because I did look as I was going through  
24 generating the plea paperwork and, you know, went under the  
25 impression that the serial number had been raised in the DFS

1 processing.

2 I don't think the paperwork, the DFS paperwork,  
3 makes it completely clear, from my memory, about the raising  
4 of the serial number. So I am going to need to -- what I  
5 would suggest, I guess, is perhaps rescheduling this until  
6 Thursday, where we could either pick up the plea hearing  
7 from here. If the serial number was not obliterated, then  
8 obviously, we will just scratch that. It will impact the  
9 guideline calculation, and we will just recalculate it to  
10 whatever it is.

11 But if it is, in fact, obliterated, you know, I  
12 will provide Mr. Ohm any confirmatory information that I can  
13 get my hands on, you know, in advance of Thursday.

14 THE COURT: Mr. Ohm, what do you think?

15 MR. OHM: I don't think I am in a position to  
16 object to that way of doing it. I can't think of anything  
17 better off the top of my head.

18 MR. WASSERMAN: The only other thing I could do is  
19 I could try to make a couple of calls to see if I could get  
20 confirmation and perhaps -- I don't know how long -- given  
21 that I am not in the office and I would have to sort of call  
22 around, I think it would be difficult to get that  
23 information that quickly.

24 THE COURT: Right. As we know, especially if we  
25 pause the hearing, it could be a little bit difficult to

1 have Mr. Ohm communicate with Mr. Douglas at the jail.

2 I think probably the most efficient course,  
3 probably the best and fairest course -- because I think the  
4 goal should be to get this right, whatever the facts end up  
5 being. A day or two more to allow that to happen, I think  
6 is the most efficient way and the best way to go forward.

7 Assuming that this is resolved in whatever fashion  
8 as to the facts, I don't think we need to go over all of the  
9 groundwork we already covered. So my intent would be to  
10 simply pick up where we are, which is essentially, with the  
11 Statement of Offense. So we basically would be continuing  
12 the plea hearing.

13 Why don't we continue the plea hearing until  
14 Thursday or Friday, either of those days is fine with me.

15 MR. WASSERMAN: Your Honor, Friday would probably  
16 be better because it would give me an extra day to make sure  
17 that I can get this information and revise the plea  
18 paperwork, if necessary, and also get any information over  
19 to Mr. Ohm.

20 THE COURT: Okay. Ms. Lesley also is telling me  
21 that there are no times available on Thursday for  
22 videoconference at the jail. In any event so we are looking  
23 at Friday. Do the parties have time limitations on Friday?  
24 Other than one motions hearing, I am free. But as  
25 Ms. Lesley looks at the time. If you all have constraints,

1 please let her know.

2 MR. WASSERMAN: Friday afternoon would be better  
3 for me. I have a meeting at 10:00 a.m. on Friday afternoon.  
4 I mean Friday at 10:00 a.m.

5 THE COURT: Duly noted.

6 MR. OHM: Your Honor, I can't do after 3:30.

7 THE COURT: Ms. Lesley, look for between 12 and  
8 2:30. It looks like 1:00 is available. Does that work for  
9 everyone?

10 MR. WASSERMAN: That's fine for the Government,  
11 Your Honor.

12 MR. OHM: That works for me, Your Honor.

13 THE COURT: Mr. Marston?

14 MR. MARSTON: That's good for me, Your Honor.

15 THE COURT: Mr. Williams, are you able to  
16 participate at 1:00 on Friday?

17 THE DEFENDANT: Yes, Your Honor.

18 THE COURT: Okay. Thank you.

19 So that's what we will do. Thank you, Mr.  
20 Douglas, for bringing this to our attention. Mr. Wasserman  
21 will go dig into this. He will be in touch with Mr. Ohm.

22 If necessary, either information will be provided  
23 to you or the parties will make whatever changes might be  
24 appropriate to the papers, and my intention as I've already  
25 said, is to not redo what we've already done with respect to

1 today's hearing, but to pick it up with the discussion of  
2 the Statement of Offense. Frankly, we don't even have to  
3 pick up the whole Statement of Offense, just resolve this  
4 question on the record. See if you are then in agreement  
5 with the Statement of Offense and go forward.

6 MR. WASSERMAN: I apologize for the confusion. I  
7 had thought this was clarified, but when I am looking at the  
8 DFS paperwork, it's not entirely clear. And I don't want to  
9 -- I think it is correct to not move forward. I should  
10 apologize. I should have picked up on that.

11 THE COURT: Not a problem. We will figure it out,  
12 and we will resume this on Friday.

13 Mr. Marston, do you want to wait until after we  
14 have a concluded guilty plea, assuming that's where we land,  
15 of course, before we talk about next steps in your matter,  
16 Mr. Williams' matter?

17 MR. MARSTON: Yes, Your Honor.

18 THE COURT: Okay. So we will just do that. This  
19 hearing is continued for all purposes until Friday at 1:00  
20 p.m. We will be together on video then and we will,  
21 obviously, pick up the plea and then we will discuss  
22 whatever we need to discuss with respect to Mr. Williams.  
23 Thank you, Counsel.

24 MR. WASSERMAN: Thank you, Your Honor.

25 MR. OHM: Very good. Thank you.



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MR. MARSTON: Thank you.  
  
(Proceedings concluded at 3:44 p.m.)

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C E R T I F I C A T E

I, **Lorraine T. Herman, Official Court Reporter**, certify that the foregoing is a true and correct transcript of the record of proceedings in the above-entitled matter.

**Please Note:** This hearing occurred during the COVID-19 pandemic and is therefore subject to the technological limitations of court reporting remotely.

July 15, 2021  
DATE

/s/  
Lorraine T. Herman

1 IN THE UNITED STATES DISTRICT COURT

2 FOR THE DISTRICT OF COLUMBIA

3 UNITED STATES OF AMERICA,

4 Plaintiff,

CR Action  
No. 1:20-121

5 vs.

Washington, DC  
March 17, 2021

6 TAVONTE WILLIAMS AND

7 THEODORE B. DOUGLAS

Defendants.

1:00 p.m.

8 \_\_\_\_\_/

9  
10 TRANSCRIPT OF TELEPHONE STATUS CONFERENCE/GUILTY PLEA  
11 BEFORE THE HONORABLE CARL J. NICHOLS  
UNITED STATES DISTRICT JUDGE

12 APPEARANCES:

13 For the Plaintiff:

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18 For T. Douglas:

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Official Court Reporter  
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P R O C E E D I N G S

COURTROOM DEPUTY: This is criminal case year 2021-121, United States of America versus Tavonte Williams, Defendant number 1 and Theodore B. Douglas, Defendant number 2. Pre-trial officer is John Copes.

Counsel, please introduce yourselves beginning with the Government.

MR. WASSERMAN: Good afternoon, Your Honor. Steve Wasserman for the United States.

THE COURT: Mr. Wasserman, good afternoon.

MR. MARSTON: Good afternoon, John Marston for Mr. Williams.

THE COURT: Mr. Marston, good afternoon.

MR. OHM: Eugene Ohm on behalf of Mr. Douglas. I apologize for holding everybody up, Your Honor.

THE COURT: No. I totally understand, Mr. Ohm. Thank you.

I note that Mr. Douglas is on by video, as is Mr. Williams. We are obviously here on the continued plea hearing that we were conducting last time. And I know that we have some new papers that we will get to.

I do think it is probably appropriate just to ensure, first, Mr. Ohm, that Mr. Douglas consents to proceed again today by videoconference in light of the pandemic and for the reasons discussed at our last hearing.

1 MR. OHM: Mr. Douglas does consent, Your Honor.

2 THE COURT: Thank you.

3 Ms. Lesley, could you then administer the oath to  
4 Mr. Douglas, so he is under oath again today?

5 COURTROOM DEPUTY: Yes, Your Honor.

6 Mr. Douglas, please raise your right hand. Do you  
7 solemnly swear that you will well and truly answer the  
8 questions propounded to you so help you God?

9 THE DEFENDANT: Yes.

10 THE COURT: Mr. Douglas, are you sick or impaired  
11 in any way that could prevent you from understanding what is  
12 happening here today?

13 THE DEFENDANT: No, Your Honor.

14 THE COURT: Mr. Ohm, do you have any reason to  
15 believe that Mr. Douglas will be unable to understand what  
16 we discuss today?

17 MR. OHM: No, Your Honor.

18 THE COURT: It appears to me that Mr. Douglas is  
19 responding appropriately to questions and appears to  
20 understand them fully, and he continues to be competent and  
21 capable of entering an informed plea.

22 Obviously, last time we covered some but not all  
23 of the topics that we would normally cover in the plea  
24 hearing. Mr. Douglas, do you recall our discussion last  
25 time about your rights to a trial and to appeal and the

1 related rights that you would be giving up if you plead  
2 guilty here today?

3 THE DEFENDANT: Yes, I do.

4 THE COURT: You recall that. And you continue to  
5 believe that you would like to waive those rights and to  
6 proceed to a guilty plea here today?

7 THE DEFENDANT: Yes.

8 THE COURT: And last time I held up and noted for  
9 the record that we had the waiver of trial by jury. I don't  
10 think we need to do that again, but I assume you continue to  
11 agree that that is your signature on the waiver of the right  
12 to trial by jury and that you so waive. Correct?

13 THE DEFENDANT: Yes.

14 THE COURT: And one thing I will note is, as I  
15 believe Mr. Wasserman noted, I believe, during the last  
16 hearing, while you are giving up a number of your rights to  
17 appeal, the plea agreement expressly authorizes you to  
18 appeal, should you wish, my decision on the motions that  
19 were pending before me last fall. Do you understand that,  
20 Mr. Douglas?

21 THE DEFENDANT: Yes, sir.

22 MR. WASSERMAN: Your Honor, this is Steve  
23 Wasserman.

24 Just to be clear, it specifically refers to  
25 preservation of his right to appeal the Motion to Suppress

1 with a decision to deny the Motion to Suppress tangible  
2 evidence.

3 THE COURT: Thank you. Yes. Exactly. Thank you  
4 for the precision there. That is exactly what I meant.

5 So with that, we are essentially where we left off  
6 last time. Here is what I would like to do. I would like,  
7 because there was a discussion on the record about the  
8 Statement of the Offense and a discussion about what the  
9 Government could put in that statement and what was in the  
10 plea, I think it would probably be best if, Mr. Wasserman,  
11 you and Mr. Ohm could state the resolution of that issue,  
12 and then we will go ahead and have you, I think, just reread  
13 or resummarize the Statement of the Offense so that we can  
14 have the record clear that that is what Mr. Douglas is  
15 agreeing to.

16 MR. WASSERMAN: Yes, Your Honor.

17 So the change to the plea removed the enhancement  
18 for an obliterated serial number, which was a four-level  
19 enhancement to the guideline range.

20 I had viewed that with the officers and determined  
21 that it was not appropriate to seek application of that  
22 enhancement, so it was removed; that also resulted in  
23 recalculation in Paragraph 4 of the plea agreement of the  
24 guideline range, which is now 12 months to 18 months of  
25 incarceration.

1           The only change that was made to the Statement of  
2   Offense, and that is otherwise in all respects the same as  
3   what I read last week, is I removed the sentence that  
4   referred to the fact that the gun had an obliterated serial  
5   number on it. In all respects the Statement of Offense is  
6   identical to what I had read at the last hearing. So that's  
7   the changes that were made to the plea and the Statement of  
8   Offense.

9           THE COURT: Thank you, Mr. Wasserman. Mr. Ohm, do  
10   you agree with all of that?

11          MR. OHM: I do, Your Honor.

12          THE COURT: Thank you.

13          I think rather than have you, Mr. Wasserman,  
14   resummarize the Statement of Offense, the record reflects  
15   that you removed the sentence about the obliteration of the  
16   serial numbers. I reviewed the Statement of Offense. That  
17   sentence is no longer in there. And the revised Statement  
18   of the Offense, which I am now holding up for the video  
19   camera and including, I think the paragraph with the removed  
20   sentence. I am now holding up for the record the final  
21   page, which I believe bears both Mr. Ohm's signature and  
22   Mr. Douglas' signature.

23          Mr. Douglas, have you reviewed the revised  
24   Statement of Offense and discussed it with Mr. Ohm?

25          THE DEFENDANT: Yes, Your Honor.



1 THE COURT: Is that your signature on the last  
2 page acknowledging that you read the description of the  
3 criminal conduct and fully understand it?

4 THE DEFENDANT: Yes.

5 THE COURT: And does the Statement of Offense now  
6 truly and accurately describe what you did in this matter?

7 THE DEFENDANT: Yes.

8 THE COURT: Are there any corrections or changes  
9 that you would make to the revised Statement of Offense?

10 THE DEFENDANT: No.

11 THE COURT: Did you, in fact, do what the  
12 Government has said that it can prove at trial?

13 THE DEFENDANT: Yes.

14 THE COURT: Thank you.

15 Now, as to the plea agreement which Mr. Wasserman  
16 has described the changes to, let me just do a little bit  
17 more colloquy here.

18 Mr. Wasserman, is this the most lenient plea offer  
19 made to Mr. Douglas in this matter?

20 MR. WASSERMAN: Yes, Your Honor.

21 THE COURT: Mr. Douglas, have you had enough time  
22 to review this plea agreement and to discuss it with Mr.  
23 Ohm?

24 THE DEFENDANT: Yes, Your Honor.

25 THE COURT: I am now going to hold up what I

1 believe is the revised plea agreement, which contains on the  
2 first page date of March 10, and on the back page,  
3 signatures of you, Mr. Douglas and Mr. Ohm, both dated March  
4 11. I think I said for the record March 10. So March 10,  
5 2021 on the front page and March 11, 2021 on the signatures.  
6 Is this your signature, Mr. Douglas, accepting and agreeing  
7 to the terms and conditions of the plea agreement?

8 THE DEFENDANT: Yes, Your Honor.

9 THE COURT: Mr. Ohm, there's obviously been some  
10 discussion about the plea agreement including what Mr.  
11 Wasserman has mentioned. Can I ask you to briefly summarize  
12 the key terms of the plea agreement. You don't need to do,  
13 I think, the basics around the waiver of appellate rights  
14 and jury rights, but just to provide for the record a  
15 summary of plea agreement from the Defendant's perspective.

16 MR. OHM: Yes, Your Honor.

17 Mr. Douglas is pleading to Count 1 of the  
18 indictment, which is a violation of 18 USC 922(g),  
19 possession of a firearm by a prohibited person. The  
20 Government is agreeing to cap at the low end of the  
21 guidelines, which we now estimate the range to be at 12 to  
22 18 months. There is a distribution case in Superior Court  
23 that has been dismissed during the pendency of this case and  
24 the Government agrees not to rebring that case, and those  
25 are the terms of the agreement in essence.

1 THE COURT: Thank you, Mr. Ohm. Mr. Wasserman,  
2 anything you think we need to add?

3 MR. OHM: I should probably include that this is a  
4 conditional plea where Mr. Douglas retains the right to  
5 appeal the Fourth Amendment decision by the Court.

6 THE COURT: Thank you. Yes. As we discussed  
7 before. Mr. Wasserman, anything you would add?

8 MR. WASSERMAN: No, Your Honor.

9 THE COURT: Thank you.

10 **BY THE COURT:**

11 Q. Mr. Douglas, let me just ask you some questions  
12 and describe to you what will happen, assuming your plea  
13 happens today, we take your plea. With respect to  
14 sentencing, have you and Mr. Ohm discussed sentencing and  
15 how the relevant statute and sentencing guidelines may apply  
16 here?

17 A. Yes.

18 Q. Let me just briefly summarize some key portions of  
19 that. Obviously we will take some of this up at sentencing.  
20 If I accept your guilty plea in this case, the statutory  
21 penalties, the statutory penalties you face are as follows:  
22 For the charge to which you are pleading, a maximum sentence  
23 of 10 years of imprisonment, a maximum fine of \$250,000 and  
24 supervised release term of not more than 3 years. You have  
25 obligation to pay any applicable interest or penalties on

1 fines not timely paid. Additionally, you face a special  
2 assessment of \$100, and upon conviction, you shall forfeit  
3 the firearm and ammunition that were seized on April 22nd,  
4 2020, and which are described in the plea agreement, which  
5 includes a Sig Sauer P320 semiautomatic pistol, serial  
6 number 58AU72741, the accompanying magazine and 13 rounds of  
7 .40 caliber ammunition.

8 Mr. Douglas, do you understand what I just listed,  
9 the prison term, supervised release term, fine, forfeiture  
10 and special assessment are statutory penalties that apply in  
11 your case?

12 A. Yes.

13 Q. Do you understand that the offense to which you  
14 are pleading guilty is a felony offense, and that if your  
15 plea is accepted and you are found guilty of that offense,  
16 such a finding may deprive you of certain civil rights, such  
17 as the right to vote, hold public office, right to serve on  
18 a jury and the right to possess any kind of firearm?

19 A. Yes.

20 Q. Have you discussed the statutory penalties and  
21 these possible consequences with Mr. Ohm?

22 A. Yes.

23 Q. Now, in deciding on a fair and appropriate  
24 sentence, when we get to that stage, I will have to consider  
25 statutory factors and sentencing guidelines which we have

1 discussed a little bit today, which are detailed guidelines  
2 for judges to consider when determining a sentence in a  
3 criminal case like this. The guideline sentencing range is  
4 for specific offenses. And although I must consult the  
5 guidelines, they are advisory not mandatory. While you and  
6 Mr. Ohm may have an idea based on your criminal history and  
7 the nature of the offense here of what your sentencing range  
8 may be, nothing will be certain until the Probation Officer  
9 submits a pre-sentence report that will come to me and to  
10 the attorneys.

11 Mr. Ohm will review it with you, and you will have  
12 a chance to make changes in it or object to portions of it.  
13 At the time of sentencing I will hear from both attorneys  
14 and I will have to determine what your sentencing guidelines  
15 range is. Once I hear from both parties and determine that  
16 range, I am still permitted to impose a sentence outside  
17 that range, which means I could sentence you above or below  
18 the range. I can't, however, sentence you to more than the  
19 maximum statutory period, which I explained earlier is 10  
20 years imprisonment.

21 When I determine your sentence, I am required by  
22 law to consider a series of factors including the nature and  
23 circumstances of the offense and your history and  
24 characteristics, the need for the sentence imposed to  
25 reflect the seriousness of the offense, to promote respect

1 for the law and provide just punishment, to afford adequate  
2 deterrence to criminal conduct, both to you and others, to  
3 protect the public from further crimes by you, and to  
4 provide you with needed educational or vocational training,  
5 medical care or other correctional treatment in the most  
6 effective manner.

7 I have to consider the kinds of sentences  
8 available. I have to consider the sentencing guidelines and  
9 the relevant range, which I have already discussed with you,  
10 and I have to consider the need to avoid unnecessary  
11 sentence disparities among Defendants who have similar  
12 records, who have been found guilty of similar conduct.

13 So, Mr. Douglas, do you understand that I will not  
14 be able to finally determine the guidelines range here until  
15 I have received a pre-sentence report and until after you  
16 and your attorney and the Government have had the  
17 opportunity to challenge the facts reported by the Probation  
18 Officer?

19 **A.** Yes, Your Honor.

20 **Q.** Do you understand that the ranges in the plea  
21 agreement, and in particular the estimated range of 12 to 18  
22 months imprisonment, that that's just an estimate at this  
23 point?

24 **A.** Yes.

25 **Q.** And do you understand that after I decide what the

1 guidelines range is, I still have the authority in my  
2 discretion to impose a sentence that is more severe or less  
3 severe than that range?

4 **A.** Yes.

5 **Q.** Finally, and just a few more questions. As I  
6 mentioned earlier, in our last hearing, before I can accept  
7 your plea, I need to make sure you are pleading guilty  
8 voluntarily. So I will ask a few more questions to make  
9 sure you are entering this plea of your own freewill.

10 Do you understand, Mr. Douglas, that the agreement  
11 reached in this case resulted from negotiations agreements  
12 between Mr. Ohm and the Government?

13 **A.** Yes.

14 **Q.** Has anyone forced, threatened or coerced you in  
15 any way regarding your plea?

16 **A.** No.

17 **Q.** Has anyone made any promises to you as to what  
18 sentence I will impose in this case if I do accept your  
19 guilty plea?

20 **A.** No.

21 **Q.** Has anyone made you any other promises or  
22 representations beyond the ones in the plea agreement or the  
23 ones discussed during this hearing, both the earlier part of  
24 the hearing and today, to induce you to give up your right  
25 to a trial?

1           **A.**    No.

2           **Q.**    And are you entering this plea of guilty  
3 voluntarily and of your own freewill?

4           **A.**    Yes.

5           **Q.**    Is there anything about this proceeding you don't  
6 understand, either the plea you are about to enter or any of  
7 the rights that you are waiving?

8           **A.**    No.

9           **Q.**    Is there anything you would like to ask me or Mr.  
10 Ohm before you decide whether to plead guilty?

11          **A.**    No.

12          **Q.**    Are you ready to decide whether you wish to plead  
13 guilty? Are you ready to proceed?

14          **A.**    Yes.

15                THE COURT: Ms. Lesley, could you please take  
16 Mr. Douglas' plea?

17                COURTROOM DEPUTY: Yes, Your Honor.

18                Mr. Theodore B. Douglas, in Criminal Case 20-121,  
19 in which you are charged with unlawful transport of  
20 firearms, unlawful possession of a firearm and ammunition by  
21 a person convicted of a crime, punishable by imprisonment of  
22 a term of 1 year in violation of 18 USC 922(g)(1), how do  
23 you wish to plea?

24                THE DEFENDANT: Guilty.

25                THE COURT: I find in the case of United States



1 versus Douglas, the Defendant, Theodore Douglas, is fully  
2 competent and capable of making a decision today, that he  
3 understands the nature of the charges and the consequences  
4 of his guilty plea; that the plea is knowing and voluntary;  
5 that he is acting of his own freewill; and that there is  
6 adequate factual basis containing each of the essential  
7 elements of the offense for the plea, I therefore accept the  
8 plea of guilty and Mr. Douglas is now adjudged guilty of the  
9 offense.

10 As I've explained, Mr. Douglas, there will be a  
11 presentence investigation, and the Probation Officer will  
12 prepare a report to assist me in sentencing. You will be  
13 interviewed by the Probation Officer. You are required to  
14 give truthful information for the report. Mr. Ohm may be  
15 present, if you wish. You and Mr. Ohm will be permitted to  
16 review the presentence report, as I mentioned, before the  
17 sentencing hearing and make any objections to any errors  
18 that you believe are in the report. And as I already said  
19 at the sentencing hearing, both you and Mr. Ohm will be  
20 given the opportunity to speak on your behalf.

21 So that then brings us, I think, to the question  
22 of next steps. Mr. Wasserman, so we have 70 days from  
23 today's date for purposes of a sentencing hearing would be  
24 around May 26th, 90 days would be around June 15th. I don't  
25 know whether probation is backed up these days. I don't

1 have a preference as between those two dates. But,  
2 obviously, we have the question of the case as it relates to  
3 Mr. Williams. Do you have a proposal for how we proceed  
4 either with respect to Mr. Douglas' sentencing or this case  
5 more generally?

6 MR. WASSERMAN: Your Honor, with respect to the  
7 sentencing of Mr. Douglas, I am going to be on leave --  
8 extended leave from about May 3rd and back on June 28th. In  
9 terms of sentencing memos, you know, I certainly could get  
10 those in prior to the 28th. I would request the 28th  
11 because it is the first day I will be back.

12 THE COURT: Thank you.

13 Let me hear from Mr. Ohm first, and then I think I  
14 would like to then have a conversation about how these dates  
15 relate to proceedings, basically, of Mr. Williams.

16 MR. OHM: All right, Your Honor. It would be our  
17 request to do it in May. I would note that Mr. Douglas --  
18 right now the estimated guideline range is 12 to 18 months.  
19 The Government's allocution for the plea is 12 months, and  
20 he was arrested in May. If he was sentenced to a year and a  
21 day, then he would have served all of his time by the time  
22 May 23rd comes around. I would ask for that date.

23 The other situation with Mr. Douglas is because he  
24 is on supervised release, there is sort of an experience in  
25 dead time being past. If he gets sentenced to a year and a

1 day here, which is essentially time served, there is still  
2 going to be a period of dead time where he is not getting  
3 any credit until the parole warrant issues because the  
4 parole warrant hasn't executed yet, and then he is going to  
5 have to be transported to a different jurisdiction to do his  
6 parole hearing. So from his perspective, obviously, getting  
7 that ball moving is something we are really interested in.  
8 We would like to come in for sentencing as soon as possible.

9 THE COURT: So, Mr. Wasserman, I think certainly  
10 the notion that May would mark the 12th month anniversary of  
11 when Mr. Douglas was detained here seems relevant to me.  
12 Assuming that a pre-sentence report could be done in time to  
13 do a hearing by April 30th, because that's the day -- the  
14 last day before you become unavailable, Mr. Wasserman.  
15 Would that be possible?

16 Alternatively, is there someone perhaps, Mr.  
17 Wasserman, who could take your place in effect for that  
18 sentencing hearing, if we can't do it in May?

19 MR. WASSERMAN: The answer to both questions is,  
20 yes. I can do the 30th, although I have a hearing at 11:30  
21 before Judge Bates on that day. Then should it be necessary  
22 to move the hearing to May, you know, I'm sure it could be  
23 covered by somebody if need be.

24 THE COURT: Mr. Copes, I know this is probably  
25 faster than you would like, but is there -- would it be

1 possible, you think, to do a pre-sentence report in time to  
2 do a sentencing on April 30th in light of, I think most  
3 importantly, the fact that the Government's allocution as to  
4 the appropriate sentence here will have run right around,  
5 you know, sometime in May. And in light of Mr. Wasserman's  
6 leave, April 30th is the last date he is available before  
7 the 12-month period would run.

8 I apologize. Mr. Copes, you are pre-trial. You  
9 wouldn't know.

10 MR. WASSERMAN: Your Honor, I misspoke. I am free  
11 on the 30th. I have that hearing on the 29th. So I am  
12 flexible on time on the 30th, should that date be chosen.

13 THE COURT: Thank you. We are a little bit more  
14 flexible on the 30th. And, Mr. Copes, I apologize. I posed  
15 the question to the wrong person there. Let's do this,  
16 let's set the sentencing hearing in this matter for April  
17 30th. We will do it by videoconference. And assuming there  
18 are no serious time constraints, let's do it at 2:00 p.m. on  
19 April 30th. What I think that means is ideally you would  
20 get sentencing memoranda April 23rd. So we are going to set  
21 all of those dates. So sentencing memoranda due April 23rd,  
22 videoconference sentencing April 30th.

23 Mr. Ohm, is it Mr. Douglas' position or what is  
24 Mr. Douglas' view or your view on having the sentencing by  
25 video?

1 MR. OHM: Given the accommodations of the Court, I  
2 think that that's fine.

3 THE COURT: Okay. It may be that we may be in a  
4 somewhat more resumed state by then, but I think it is  
5 probably prudent to assume we are not and therefore we would  
6 be proceeding by video. So I think that that covers the  
7 sentencing hearing.

8 I am assuming that probation will be able to get  
9 the pre-sentence report done in time for all of this to  
10 happen. If for some reason that becomes a significant  
11 problem, I will probably have Ms. Lesley circle back with  
12 the parties to see if there is another time that would  
13 accommodate their schedule. If that happens, Mr. Wasserman,  
14 it may be the case that I calendar the sentencing hearing  
15 for sometime in May, and then we just have to have somebody  
16 from the US Attorney's Office cover for you.

17 MR. WASSERMAN: I understand, Your Honor.

18 THE COURT: Thank you.

19 So that covers Mr. Douglas' sentencing hearing.

20 Mr. Marston, I think that turns the floor over to  
21 you. Right now we are -- and I suppose Mr. Ohm as well --  
22 although, if we do the hearing on April 30th, perhaps your  
23 Fifth Amendment issue may not arise with respect to possible  
24 testimony of Mr. Douglas. We are currently holding still a  
25 May 3rd trial date. Mr. Marston, do you have thoughts about

1 that in light of that?

2 MR. MARSTON: Thank you, Your Honor.

3 Thinking through the timing and having discussed  
4 it with Mr. Williams, the only person who can decide whether  
5 Mr. Douglas will testify is Mr. Douglas. I will not be able  
6 to fully evaluate that prospect and -- not having had a  
7 chance to talk to Mr. Douglas -- which is of course,  
8 understandable. I think it would take some time to evaluate  
9 the potential testimony on Mr. Douglas' part, and given the  
10 parole hearing Mr. Ohm mentioned, it is possible that it  
11 would take some additional time to do so.

12 I don't think we could go forward as quickly as  
13 early May. I mean, Mr. Wasserman has mentioned not being  
14 the person to try this case. I guess I would ask to allow  
15 us to put our case together and to allow us to evaluate  
16 Mr. Douglas' testimony and Mr. Douglas to evaluate whether  
17 he is truly prepared to testify, I would ask for a trial  
18 date in early June, if possible. Perhaps the week of the  
19 7th or the 14th.

20 THE COURT: Thank you.

21 So what I am doing now is I am looking at this  
22 calendar that we have just to see if there are dates around  
23 then that we should at least attempt to hold for present  
24 purposes. Just give me a second while I pull this up. I  
25 know there is availability in mid-June. I just don't know

1 the specifics. Okay. Here we are.

2 So it appears to me that trial beginning on June  
3 8th or June 9th -- and not June 7th because there is already  
4 one scheduled for that day -- could work. Again, I think  
5 now, since we would be talking about a single-Defendant  
6 trial, what would likely happen is we would do voir dire in  
7 the ceremonial courtroom, under the procedures that I think  
8 have now been posted online. We would do the voir dire in  
9 the ceremonial courtroom. I don't know if we would have to,  
10 depending on the schedule for the rest of the court, but we  
11 would be available to move to my courtroom for the trial.

12 So we could start on the 8th. I believe we could  
13 also start on the 9th or the 10th. And then the following  
14 week it appears to me -- but Ms. Lesley, correct me if you  
15 think I am reading this wrong -- that we could also start on  
16 the 15th or 16th of the following week, under the same  
17 general idea of doing, first, voir dire in the ceremonial  
18 courtroom, and then moving to my courtroom for the actual  
19 trial itself.

20 Mr. Marston, would you like to pick -- obviously,  
21 Mr. Wasserman, you'll be on leave then. I think your plan  
22 was to have someone stand in your place for trial. Should  
23 we pick a date now, at least a notional trial date, or do  
24 you need to confer, Mr. Wasserman or even Mr. Marston, with  
25 your client on these questions, at least on the date

1 question?

2 MR. WASSERMAN: Your Honor, I don't know at this  
3 point who would handle the matter. So I think we can set  
4 one of those dates. If that's what Mr. Marston wants, you  
5 know, I will defer to him, whether he needs to confer with  
6 his client on dates but those are fine at this point.

7 THE COURT: Thank you. Mr. Marston?

8 MR. WASSERMAN: The only thing I would add, I  
9 would note that given that Mr. Douglas just entered a  
10 conditional plea, I don't believe that his Fifth Amendment  
11 privilege will be extinguished by the time a trial date  
12 rolls around in this matter for Mr. Williams.

13 MR. MARSTON: This is Mr. Marston.

14 I understand and agree with what Mr. Wasserman is  
15 saying. My understanding is that Mr. Douglas' odds of  
16 testifying will increase after his sentencing. And while we  
17 can all guess whether he will testify or not, the only  
18 person who can decide that, of course, is Mr. Douglas. He  
19 can do so whether he has Fifth Amendment -- [inaudible] -- I  
20 can certainly understand from his perspective why, after  
21 sentencing, you know, his potential testimony, which I, of  
22 course, don't know what the would be in full having not  
23 talked to him, but I can certainly understand why his  
24 chances of testifying might increase after sentencing, even  
25 though he may maintain some Fifth Amendment rights.



1 All of that said, I have talked with Mr. Williams.  
2 I would ask for June 15th as our trial date. We discussed  
3 middle of June and he's prepared to agree to a trial around  
4 that time.

5 THE COURT: Thank you, Mr. Marston.

6 Ms. Lesley, am I reading the materials correctly  
7 when I say that June 15th is likely a date on which we could  
8 begin this trial?

9 COURTROOM DEPUTY: Yes. I am looking at it. It  
10 does seem as though -- the fact that it doesn't show on the  
11 one where it says highlight with voir dire 6/8 and 6/9, it  
12 doesn't show that for the following date, but there aren't  
13 any dates other than the 6/14 date. So by looking at what  
14 you are looking at, it looks like it is available.

15 Let me look at the jury calendar that we have to  
16 actually enter as the courtroom deputies. Give me one  
17 moment.

18 THE COURT: I apologize to the parties but we are,  
19 at least the notional plan that we haven't really started  
20 but is out there is to have -- and I think we discussed some  
21 of this before -- is to have only one voir dire occur at a  
22 time in the ceremonial courtroom. Only three trials going  
23 on at once in the courthouse as a whole. We have this  
24 schedule that Ms. Lesley and I are both looking at that  
25 seems to have availability on the 15th and 16th, but it's

1 not as clear as the earlier week. And it's obviously very  
2 dependent on what is going on with the other trials that are  
3 on that week. There is only one other trial that both of us  
4 can see, but there may be something about it that we are not  
5 understanding.

6 Ms. Lesley, if you don't see anything to the  
7 contrary, I think we should just go ahead and calendar this  
8 trial to start June 15th.

9 COURTROOM DEPUTY: Okay. I can do that. I am  
10 looking at the --

11 MR. OHM: Your Honor, that is my trial. I could  
12 shed some light if the Court has any questions.

13 THE COURT: In front of Judge Kollar-Kotelly? Is  
14 that a single-Defendant trial?

15 MR. OHM: It is and we are set to do voir dire on  
16 June 14th. I don't know if the Court is budgeting for one  
17 or two days.

18 THE COURT: I think everyone is trying to budget  
19 one day for voir dire. Have you discussed with Judge  
20 Kollar-Kotelly whether you would move to her courtroom for  
21 the trial? That's really the question, I think.

22 MR. OHM: I believe that that conversation has  
23 happened. I am trying to remember if she said -- I think  
24 she did say she had one of the courtrooms that she could do  
25 that in -- oh, no. You know what? I think she said it

1 depends on the weather. If there is air conditioning, the  
2 courtroom is good. But if there's not, then it might not be  
3 because of the air flow. There was something not clear.  
4 But it is a single-Defendant case.

5 THE COURT: It's a single-Defendant case. So are  
6 there any witnesses --

7 MR. OHM: You know what, Your Honor, Judge  
8 Kollar-Kotelly said it would be in her courtroom or a  
9 different non-ceremonial courtroom courtroom, that there was  
10 the possibility she would be borrowing somebody's courtroom.

11 THE COURT: All right. That's the alternative  
12 here. So it sounds to me that nobody on this call has  
13 reason to believe that we cannot start this trial on June  
14 15th. What we will do is we will set it here for a trial on  
15 June 15th. I will let the calendar committee know of that,  
16 that this is not happening on May 3rd, which will obviously  
17 free some other time up May 3rd for something possibly  
18 happening, and we will do this matter on June 15th.

19 Mr. Marston, are you anticipating filing any other  
20 other pre-trial motions, in addition to the ones I've  
21 already resolved, obviously.

22 MR. MARSTON: Not at this time.

23 THE COURT: Okay. So, Mr. Wasserman, are you  
24 aware of any pre-trial motions, other than the ones I've  
25 obviously resolved?

1 MR. WASSERMAN: Not at this time, Your Honor.

2 THE COURT: So that's helpful.

3 We will calendar this for the 15th, as I said. I  
4 will enter a scheduling order that lays out various dates on  
5 the assumption that we are starting the 15th. I will  
6 include time for the filing of pre-trial motions but think  
7 it's fair that we can assume those will not be happening or  
8 at least if we do it will be unexpected ones.

9 The question you are asking, Ms. Lesley, I think  
10 we do voir dire on the 15th. Obviously, if we could start  
11 trial that afternoon, I think we would try. But I think the  
12 safest bet is we would be doing the voir dire in the  
13 ceremonial courtroom on June 15th and then start trial the  
14 next day in either the ceremonial courtroom or my courtroom  
15 or some other courtroom if the court decides it is more  
16 appropriate to do somewhere else. I am not up to speed, I  
17 must admit, on what courtrooms have the best air flow and  
18 whether my courtroom is determined to be a good one or a bad  
19 one. I think the easiest is to do voir dire on day one, the  
20 15th, start the trial the next day because that might just  
21 have to be in another courtroom wherever it is.

22 COURTROOM DEPUTY: Okay. Thank you, Your Honor.

23 THE COURT: So having done all of that, is there  
24 anything else we should discuss today? Obviously, we will  
25 have -- as to Mr. Williams' portion of this matter, we will

1 have some dates that will be relevant as we approach trial.  
2 We will do another conference as we get close to trial, but  
3 for present purposes, is there anything else we should  
4 discuss today?

5 MR. WASSERMAN: Your Honor, there is the matter of  
6 Mr. Williams' noncompliance with heightened supervision. I  
7 believe pre-trial filed multiple status reports indicating  
8 that he has violated the terms of his release.

9 THE COURT: Mr. Copes.

10 MR. OHM: Your Honor, not to interrupt, I have  
11 another hearing scheduled for 2. May I be excused?

12 THE COURT: Yes, Mr. Ohm, you may be excused.

13 MR. OHM: And Mr. Douglas as well.

14 THE COURT: Yes, and Mr. Douglas as well.

15 MR. OHM: Thank you, Your Honor.

16 THE COURT: Mr. Copes, could you describe to me  
17 the nature of the non-compliances from pre-trial's  
18 perspective?

19 PROBATION: Yes, John Copes, pre-trial services.  
20 The Defendant has been warned on several occasions to ask  
21 for permission or approval prior to leaving his residence.  
22 The Defendant is currently on home detention, location  
23 restriction program, and is to comply as directed. He is  
24 restricted to his residence due to being on home detention,  
25 except for employment, education, religious services,

1 medical, substance abuse, mental health treatment, attorney  
2 visits, court appearances, court obligations or other  
3 activities approved in advance of pre-trial.

4 According to his records, the Defendant has left  
5 his house often, many times to go to the store, and on  
6 several occasions to go and spend significant time near the  
7 Brentwood Recreational Center on the 2300 block of 15th  
8 Street Northeast. The Defendant has not been approved to go  
9 to that location, and when the Defendant leaves -- he has on  
10 occasion asked for permission to leave, but he does not on a  
11 daily basis ask for permission to leave. Typically, we  
12 wouldn't approve, when the Defendant is on home detention,  
13 this is not part of his employment or education or one of  
14 the things listed while participating in home detention. We  
15 wouldn't approve to leave every day to go to the store, but  
16 maybe on a weekly basis go to the store to pick up items  
17 that he can cook, and potentially set up time frames when he  
18 could go to the store, per se.

19 This is why PSA is requesting the Defendant's  
20 removal from -- [inaudible] -- program due to that  
21 non-compliance. The Defendant mainly needs permission to  
22 leave his residence before he leaves the residence, whenever  
23 he wants to or needs to leave for any purpose.

24 THE COURT: Thank you.

25 Mr. Copes, do you have a proposal or a

1 recommendation as to anything I should do other than warn  
2 Mr. Williams that if he continues to fail to comply with the  
3 conditions of his release and home detention that he may end  
4 up detained pre-trial?

5 PROBATION: Mr. Williams does communicate with me.  
6 And Mr. Williams -- I don't have movement from Mr. Williams  
7 over nighttime. It is mainly the communication that he  
8 lacks during the day when he is leaving. So I think the  
9 Court's admonishment at the time would suffice, but the  
10 Defendant needs to fully understand that he needs to  
11 communicate with pre-trial before he leaves his residence.

12 Also, I would like to -- I don't know the activity  
13 that he has had at the Brentwood Recreation Center. I would  
14 like that added as a stay-away. It looks like he has some  
15 interests in that location.

16 THE COURT: Thank you, Mr. Copes.

17 Mr. Wasserman, do you have a view?

18 MR. WASSERMAN: Your Honor, I would note that,  
19 first of all, the Brentwood Recreation Center is in the same  
20 block where the charged offense occurred. It is my  
21 understanding that the Defendant does not live in that area,  
22 and I am not aware of any legitimate reason why he needs to  
23 be over there, and certainly not while he is on electronic  
24 monitoring.

25 I would also note that this is now the second

1 violation where he has failed to comply with home detention  
2 and traveled outside of his home without permission and, I  
3 believe the last time he had issues with charging his  
4 electronic bracelet. So I am concerned that he is just  
5 blowing off his conditions.

6 I would note that the pre-trial services'  
7 recommendation is program removal, although I don't know  
8 that Mr. Copes -- and it appears that Mr. Copes is not  
9 necessarily asking for that now. But if the Defendant is  
10 just going to continue to fail to abide by his conditions  
11 then, I am going to be moving to, you know, that he be  
12 revoked and detained pending trial.

13 THE COURT: Thank you, Mr. Wasserman.

14 Mr. Marston, what say you?

15 MR. MARSTON: Thank you, Your Honor.

16 I will just note that Mr. Wasserman's reference to  
17 a prior violation was before Your Honor had this case, I  
18 believe preindictment. In any event, many, many months ago.  
19 If there were issues with his charging his ankle monitor, it  
20 was because there was an issue with the ankle monitor. He  
21 submitted to pre-trial services and went and got a new  
22 monitor, if I recall correctly.

23 Overall, he's been subjected to this high level of  
24 supervision for nearly one year, and he's been highly  
25 compliant. There have been, as one might expect, a few



1       hiccups along the way, including recently, which I discussed  
2       with Mr. Williams. He understands the seriousness of it.  
3       As the weather gets better, he is at home, and wants to get  
4       some exercise or whatever down at the rec, which is a  
5       common, typical, positive thing to do. It might occur to  
6       him to be a positive place to go and positive activities  
7       occur there. So I don't know on those particular days what  
8       was happening there. Other than he didn't do anything  
9       wrong. He simply went out, if he went out. With his  
10      monitor charged still. It's not like he has been trying to  
11      hide anything.

12               He has been highly compliant for nearly one year  
13      in this program. It is my understanding from Mr. Copes by  
14      program removal he simply meant that the Court should just  
15      allow Mr. Williams to be on PR, with perhaps in-person or  
16      telephone check-in, not revocation.

17               I think Mr. Copes is correct that Mr. Williams has  
18      been in communication with Mr. Copes, basically, constantly  
19      for a year, and has done incredibly well with staying at  
20      home. He's not on full home confinement. I will also note.  
21      Mr. Wasserman mentioned that he is on, essentially, full  
22      home detention.

23               There are two levels of home confinement in the  
24      pre-trial program, in the Court's standard order for  
25      pre-trial release. One is you can't leave home at all.

1 It's total home confinement and that's where Mr. Williams  
2 started. Because he did so well there, the Magistrate Judge  
3 lowered Mr. Williams' conditions to allow him to leave, as  
4 it says on the pre-trial services report, with advance  
5 approval, which Mr. Williams has obtained numerous times  
6 from Mr. Copes. I think there was a recent breakdown in  
7 communication or Mr. Williams' request for permission to  
8 leave, but the overall totality of Mr. Williams' compliance  
9 during the last 11 months indicates that he has been -- the  
10 HISP has worked very well from him. Frankly, he probably  
11 should be removed. It is a lengthy program. I think he has  
12 done everything he can to show he is willing to comply and  
13 deal with this case, appear at his hearings and appear by  
14 video.

15 So I had, actually, you know, suggested that he be  
16 placed on personal recognizance; that the Court, if it so  
17 desires, for him to remain in the HISP program. I think an  
18 admonishment, I guess, to stay away from the rec, I can  
19 guess we could accept that. But I think, actually,  
20 continuing to check in with Mr. Copes and seek his approval  
21 prior to departing his home is appropriate.

22 THE COURT: Thank you, Mr. Marston.

23 So I'm not going to change the key terms of his  
24 release. I am not going to remove him from the program so  
25 to speak. I am going to keep him on the current conditions.

1 Mr. Williams, it sounds like maybe some difference of  
2 opinions about how much checking in. It sounds like you  
3 haven't actually haven't been letting Mr. Copes know, at  
4 least sometimes, when you would like to leave the house. I  
5 do think that that is a violation of the conditions on which  
6 you are released.

7 It doesn't seem, at this point, serious enough to  
8 detain you. I think it is incumbent on you to reach out to  
9 Mr. Copes and tell him or seek his permission for you to  
10 leave your house whenever it is. So I think that is an  
11 appropriate condition at this point. And I think that, you  
12 know, my just reiterating it is very important here is the  
13 thing to do.

14 Certainly, if that continues to be a problem, and  
15 if there are any other problems, I will hear it. And if it  
16 means that there is a significant enough violation of the  
17 conditions, that we need to detain Mr. Williams, I will  
18 consider that. It doesn't seem to me to be the case here.

19 As to the rec center, I am concerned that that is  
20 very close to the location where Mr. Williams and  
21 Mr. Douglas were arrested. Mr. Marston, on the other hand,  
22 makes a point that, perhaps, what Mr. Williams is doing  
23 there is good, outdoor exercise or otherwise or something  
24 like that. I don't have enough information to make that  
25 judgment. It seems to me that that is the kind of

1 conversation, Mr. Copes, you should be having with Mr.  
2 Williams when he calls you and asks for permission to go to  
3 that location. You need to determine what the purpose of  
4 that is and have judgment around whether it's a good thing  
5 for him to be doing that or problematic.

6 If you think it's problematic, then we should have  
7 another hearing, and I will consider at that point the  
8 stay-away order, with a little bit more information around  
9 what you think he's up to there.

10 PROBATION: Yes, Your Honor.

11 THE COURT: Mr. Wasserman, I appreciate you  
12 bringing that to my attention. I, obviously, was aware of  
13 the reports. The net of it all is let's keep things where  
14 they are. Mr. Williams, I think it is very, very important  
15 for you to be as in touch as possible with Mr. Copes, and  
16 certainly as much as is required by the conditions of your  
17 release and the HISP program as humanly possible, because it  
18 is very important for Mr. Copes to have complete confidence  
19 that you are where you are supposed to be.

20 Again, Mr. Copes, as to -- and that includes,  
21 Mr. Williams, if you want to go to the Brentwood Rec Center,  
22 you need to tell Mr. Copes that that's the plan. And I  
23 think very appropriate for him to ask you what you are up to  
24 there and what the plan is. And then, Mr. Copes, if you are  
25 not comfortable with what you hear, come back to me and we

1 is can have another hearing next week or whatever. Okay?

2 PROBATION: Yes, Your Honor.

3 THE COURT: Any other issues, Mr. Wasserman, for  
4 today?

5 MR. WASSERMAN: No, Your Honor.

6 THE COURT: Thank you. Mr. Marston?

7 MR. MARSTON: No, Your Honor. Thank you.

8 THE COURT: Okay. Obviously, we will do  
9 Mr. Douglas' sentencing. We will confirm, to the extent  
10 that we can, that the trial date we set is on. And assuming  
11 we get all of that clarity, we will then issue an order that  
12 sets out various pre-trial dates and the like.

13 Thank you, Counsel.

14 MR. WASSERMAN: Thank you, Your Honor.

15 MR. MARSTON: Thank you, Your Honor.

16 (Hearing concluded at 2:20 p.m.)  
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C E R T I F I C A T E

I, **Lorraine T. Herman, Official Court Reporter**, certify that the foregoing is a true and correct transcript of the record of proceedings in the above-entitled matter.

**Please Note:** This hearing occurred during the COVID-19 pandemic and is therefore subject to the technological limitations of court reporting remotely.

July 15, 2021  
DATE

/s/  
Lorraine T. Herman

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

THEODORE B. DOUGLAS  
Defendant.

CR Action  
No. 1:20-121

Washington, DC  
May 4, 2021

9:16 a.m.

TRANSCRIPT OF SENTENCING  
BEFORE THE HONORABLE CARL J. NICHOLS  
UNITED STATES DISTRICT JUDGE

APPEARANCES:

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Reported By: LORRAINE T. HERMAN, RPR, CRC  
Official Court Reporter  
U.S. District & Bankruptcy Courts  
333 Constitution Avenue, NW  
Room 6720  
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P R O C E E D I N G S

COURTROOM DEPUTY: This is criminal case year 2020-121, United States of America versus Theodore B. Douglas, Defendant number 2. Probation Officer is Aidee Gavito.

Counsel, please introduce yourselves for the record, beginning with the Government.

MR. WASSERMAN: Good morning, Your Honor. Steve Wasserman for the United States.

THE COURT: Mr. Wasserman, good morning.

MR. OHM: Eugene Ohm on behalf of Mr. Douglas.

THE COURT: Good morning, Mr. Ohm and Ms. Gavito. Mr. Douglas, good morning.

THE DEFENDANT: Good morning, Your Honor.

THE COURT: Just a few preliminary matters, first with respect to conducting this hearing by videoconference. Ordinarily we would hold this hearing in person, but during the pandemic Congress has authorized federal judges to conduct sentencings by video or teleconference so long as after consulting with counsel, the Defendant consents and the Judge finds that the sentencing cannot be further delayed without serious harm to the interests of justice.

Mr. Douglas, after consulting with Mr. Ohm, have you decided that further delay is inappropriate and that you would like to resolve this matter as promptly as possible



1 and without the risks that attend being physically present  
2 in the courtroom during the COVID-19 pandemic?

3 THE DEFENDANT: Yes, sir, Your Honor.

4 THE COURT: Thank you.

5 Mr. Ohm, do you agree that we should proceed this  
6 morning by video?

7 MR. OHM: I do, Your Honor.

8 THE COURT: I assume, Mr. Wasserman, you agree as  
9 well?

10 MR. WASSERMAN: Yes, Your Honor.

11 THE COURT: I find that because Mr. Douglas, after  
12 consulting with counsel, consents to proceed by  
13 videoconference, and that the interests of justice would be  
14 seriously harmed by further delay, that it is appropriate to  
15 proceed this morning by video.

16 Second, before we begin with the sentencing  
17 matters, I believe we need to correct a -- what I think is  
18 an administerial error from the plea agreement, which states  
19 that Mr. Douglas is pleading guilty, and as we discussed at  
20 the plea hearing, to Count 1 of the indictment against him.  
21 But as the Probation Office correctly pointed out when  
22 completing Mr. Douglas' pre-sentence investigation report,  
23 that Count 1 of the indictment does not charge Mr. Douglas  
24 with unlawfully possessing a firearm, instead it charges his  
25 co-defendant, Mr. Williams, with that offense. Mr. Douglas

1 is charged only in Count 2 of this indictment.

2 Mr. Wasserman, how do you propose that we correct  
3 that error?

4 MR. WASSERMAN: Your Honor, the parties submitted  
5 to the Court yesterday, Page 1 of the plea agreement, which  
6 essentially handwritten, crossed out, Count 1 on Page 1 and  
7 wrote in Count 2, and all parties initialed and dated the  
8 change; so that's how we propose to modify the plea  
9 agreement.

10 THE COURT: And, Mr. Ohm, you agree that that's an  
11 appropriate course here, and that we'll docket it as an  
12 amended plea agreement, I believe?

13 MR. OHM: I do, Your Honor.

14 THE COURT: Mr. Douglas, do you agree with this  
15 course; that is to say, essentially substituting Count 2 for  
16 Count 1 in the plea agreement to reflect the count that you  
17 are charged with?

18 THE DEFENDANT: Yes, Your Honor.

19 THE COURT: Okay. Thank you very much.

20 So now that we have those two preliminary matters  
21 out of the way, we are ready to proceed to sentencing. I  
22 have read Probation's pre-sentence investigation report and  
23 recommendation, the Government's sentencing memorandum, the  
24 Defendant's sentencing memorandum, Mr. Douglas' letter and  
25 the letters of support submitted on Mr. Douglas' behalf.

1 Are there any other written submissions I should know about  
2 or anything to add to those written submissions? Of course,  
3 I will hear argument and from the Defendant, if he would  
4 like, but just as to the written submissions, anything I  
5 have not mentioned or that I should be aware of?

6 MR. WASSERMAN: Not for the Government, Your  
7 Honor.

8 MR. OHM: No, Your Honor.

9 THE COURT: Thank you.

10 Will there be any family members or guests on the  
11 videoconference today?

12 MR. OHM: Your Honor, there are family members on  
13 the public line, Mr. Douglas' parents and Mr. Douglas' -- I  
14 believe the mother of Mr. Douglas' son are on the public  
15 line.

16 THE COURT: Thank you, Mr. Ohm. Welcome to them.

17 So there are four steps for us to accomplish this  
18 morning. First, I will consider any objections to the PSR  
19 and make my factual findings; second, I will calculate the  
20 appropriate guidelines range, the sentencing guidelines;  
21 third, I will hear from Probation, counsel and Mr. Douglas,  
22 if he would like to speak; and, finally, I will pronounce  
23 the sentence.

24 Before we turn to the objections to the  
25 pre-sentence investigation report, I will just ask Mr.

1 Douglas a few questions to make sure that he has reviewed  
2 and understands the report.

3 Mr. Douglas, have you had a chance to review the  
4 pre-sentence report with Mr. Ohm?

5 THE DEFENDANT: Yes, Your Honor.

6 THE COURT: Did you have enough time to talk to  
7 him about that report and the briefs that have been filed in  
8 this case?

9 THE DEFENDANT: Yes.

10 THE COURT: Are you completely satisfied with the  
11 services of Mr. Ohm?

12 THE DEFENDANT: Yes, Your Honor.

13 THE COURT: Thank you. Thank you, Mr. Douglas.

14 Now let's turn to the objections of the  
15 pre-sentence investigation report lodged by the parties.  
16 Mr. Ohm, why don't we start with you. I believe the state  
17 of play is as follows, which is that the Defendant and the  
18 Government do not believe that there should be a four-level  
19 enhancement for alteration or obliteration of the serial  
20 number on the weapon at issue here under Section  
21 (2) (k) (2.1) (b) (4) of the sentencing guidelines, but  
22 obviously Probation, at a minimum, suggests that there is  
23 enough evidence in the record, including the statement of  
24 facts filed many months ago to support such an enhancement.

25 What is your -- obviously you've objected to that,

1 but what is your argument for why there isn't enough  
2 evidence in the record to support that enhancement?

3 MR. OHM: Well, Your Honor, I think it's a factual  
4 matter. There simply isn't an obliterated serial number.  
5 It is a serial number that is visible on the firearm. Is  
6 visible, I think, to the plain eye. I actually inspected  
7 the firearm a long time ago in preparation for the motions  
8 hearing. I was able to see in our pictures that it was  
9 visible.

10 I think it is plainly a factual matter. Probation  
11 here has, essentially, hearsay information reported to them  
12 through police reports, but while it was somewhat visibly  
13 affected, I don't think there is any reasonable argument  
14 that it was anywhere near obliterated, because the  
15 firearm -- the serial number of the firearm could plainly be  
16 seen and was actually reported in the initial police report  
17 when the firearm was collected.

18 So, purely as a factual matter, Your Honor, the  
19 parties that actually had access to the firearm are relying  
20 upon the facts that are what they plainly are, which is that  
21 the serial number is there and exists. Probation obviously  
22 has to rely on police reports and whatnot and so could not  
23 see it is not obliterated.

24 If the Court sort of follows the logic that  
25 Probation set forth or is inclined to, I think that this is

1 probably the worst case for the Court to put out this test  
2 run. I think what was clear to the Court through the  
3 body-worn camera and the testimony that the Court saw at the  
4 suppression hearing, that Mr. Douglas never actually saw the  
5 firearm that he possessed. As a factual matter and, in  
6 fact, I don't know if the Court knows this, when the  
7 Government pursued its investigation, the Government took  
8 DNA samples and had DNA testing done comparing Mr. Williams'  
9 DNA with the firearm but not Mr. Douglas' because it was  
10 agreed upon that Mr. Douglas had never touched the firearm  
11 or it was not the Government's theory or anybody's theory  
12 that he had ever touched or actually put his hands on the  
13 firearm.

14 So to the extent that the obliterated serial  
15 number is sort of this strict liability enhancement that's  
16 being advanced here or could be considered that the Court  
17 would have to combine this sort of strict liability concept  
18 along with the idea that a serial number that is scratched  
19 but not obliterated qualifies for the enhancement, is just  
20 several bridges too far in the analysis. So I urge the  
21 Court not to apply the firearm enhancement.

22 THE COURT: Mr. Wasserman, what is the  
23 Government's view?

24 MR. WASSERMAN: Your Honor, the Government  
25 similarly objects to the application of the enhancement,

1     although for slightly different reasons. I don't believe  
2     there's sufficient evidence in the record for the Court to  
3     conclude that the enhancement would apply.

4             What Probation is relying on is the statement of  
5     facts from the Complaint, which really isn't evidence. It's  
6     certainly not evidence that was presented to the Court  
7     during sentencing and subject to cross examination. So I  
8     don't really think that the Court necessarily needs to reach  
9     the factual issue of whether or not the defacement of the  
10    serial number is sufficient to apply the enhancement,  
11    although the information that I have is that the serial  
12    number was visible to the naked eye, notwithstanding the  
13    attempts to scratch it off.

14            But that evidence isn't in the record, and as I  
15    mentioned in my sentencing memorandum, the D.C. Circuit has  
16    not addressed this specific issue about the extent of the  
17    defacement that is necessary in order to apply the  
18    enhancement. There is not evidence in this record, from  
19    which I submit the Court can make that determination. The  
20    parties, quite frankly, as part of the plea, agreed that the  
21    enhancement should not apply.

22            As I pointed out in my sentencing memorandum, the  
23    cases that Probation relied on largely applied the  
24    enhancement in situations where there was at least partial  
25    obliteration of the serial number, such that it was not

1 visible to the naked eye. I think there may have been one  
2 case where the Court applied the enhancement, even though it  
3 was visible to the naked eye. But those cases that were  
4 cited by Probation, as I recall from reading them, one or  
5 more of the numbers were not readable or legible to the  
6 naked eye and could not be read without some sort of  
7 forensic processing.

8 I don't think those cases would necessarily apply  
9 in this case anyway. Again, given the fact that the D.C.  
10 Circuit has not addressed this issue, I don't think that  
11 this is the appropriate case, based on this record, for the  
12 Court to make that decision and apply the enhancement.

13 THE COURT: Thank you, Mr. Wasserman.

14 Ms. Gavito, what is Probation's response to these  
15 arguments? I mean, in particular, other than the statement  
16 of facts, is there any evidence in the record that would  
17 support the argument that the serial number was obliterated  
18 or altered here?

19 PROBATION: No, Your Honor. There is no other  
20 evidence. I relied on the documents that were filed with  
21 the Court initially. And there is nothing else to add, Your  
22 Honor.

23 THE COURT: Thank you very much.

24 So as to the pre-sentence report, under Rule 32  
25 (1) (3) (a) I accept the factual findings regarding the



1 circumstances of the offense contained in the undisputed  
2 portions of the presentence investigation report. I adopt  
3 those facts for the purpose of imposing the sentence.

4 As to the portions of the pre-sentence  
5 investigation report, to which the Government and Mr.  
6 Douglas have objected and we just discussed, the record  
7 before me does not contain insufficient evidence to find  
8 that the serial number on the firearm was altered or  
9 obliterated within the meaning of Section (2) (k) (2.1) (b) (4)  
10 of the sentencing guidelines; I therefore find on the record  
11 before me that the four-level enhancement for an; altered or  
12 obliterated serial number does not apply. I don't believe I  
13 need to reach the question of how much alteration or  
14 obliteration is sufficient, nor do I need to reach the  
15 Defendant's argument about the strict liability nature of  
16 the enhancement, because I simply think the evidence in the  
17 record does not support the enhancement.

18 So as to the guidelines questions then, obviously  
19 the sentencing guidelines apply here. They are not  
20 mandatory. They are advisory but I, nevertheless, must  
21 calculate and consider them. According to the PSR, the  
22 relevant guideline is Section (2) (k) (2.1) because Mr.  
23 Douglas pleaded guilty to a violation of 18 US Code, Section  
24 922(g) (1). Because Mr. Douglas was a prohibited person at  
25 the time of the offense, committed the offense with

1 knowledge, intent or reason to believe the offense would  
2 result to the transfer of a firearm or ammunition to a  
3 prohibited person, the base offense level is 14.

4 As I've already determined, the four-level  
5 enhancement for the alteration or obliteration of the serial  
6 number does not apply here because the record does not  
7 contain sufficient evidence for the Court to find that the  
8 serial number was altered or obliterated.

9 An offense level reduction, however, does apply  
10 because Mr. Douglas accepted responsibility for his offense.  
11 The offense level is decreased by 2; that results in a total  
12 offense level of 12.

13 Putting aside the questions we've already  
14 discussed -- and again, assuming that the four-level  
15 enhancement, as I've already found, does not apply, does  
16 anyone object to the total offense level calculation?

17 Mr. Wasserman?

18 MR. WASSERMAN: No, Your Honor.

19 MR. OHM: Not on behalf of Mr. Douglas, Your  
20 Honor.

21 THE COURT: Ms. Gavito, I assume Probation agrees  
22 with that calculation assuming the four-level enhancement  
23 isn't applicable; is that correct?

24 PROBATION: That's correct, Your Honor.

25 THE COURT: Thank you.

1 As to the criminal history category, Mr. Douglas  
2 received five total points for his 2013 conviction for an  
3 unlawful possession of a firearm. Mr. Douglas received  
4 three points for the offense itself, and a two-point  
5 enhancement, committing the offense charged in this case  
6 while under a criminal justice sentence before that 2013  
7 offense, that results in a total criminal history category  
8 score of five, which translates to criminal history --  
9 sorry. I am not sure if I said that correctly. This  
10 results in a total criminal history score of five, which  
11 translates to criminal history category three. That's  
12 obviously in the pre-sentence report. There weren't any  
13 objections to that, but does anyone object to that  
14 calculation of Mr. Douglas' criminal history category? Mr.  
15 Wasserman?

16 MR. WASSERMAN: No, Your Honor.

17 THE COURT: Mr. Ohm?

18 MR. OHM: No, Your Honor.

19 THE COURT: Ms. Gavito, it's in your report but  
20 you agree?

21 PROBATION: Yes, Your Honor, I agree.

22 THE COURT: So that offense level of 12 and  
23 criminal history category of 3 results in a sentencing  
24 guidelines range of 15 to 21 months imprisonment. I'll ask  
25 again, I guess, I think I know the answer, but assuming

1 offense level of 12 and criminal history category 3, the  
2 parties agree that the appropriate guidelines range is 15 to  
3 21 months? Mr. Wasserman?

4 MR. WASSERMAN: Yes, Your Honor.

5 MR. OHM: Yes, Your Honor.

6 THE COURT: And Ms. Gavito?

7 PROBATION: Yes, Your Honor.

8 THE COURT: As to a fine, I can impose a fine up  
9 to \$250,000 under the statute. The guidelines range is 5500  
10 to \$55,000. Mr. Wasserman, do you agree aside from the \$100  
11 mandatory special assessment, Mr. Douglas does not have the  
12 means to pay a fine?

13 MR. WASSERMAN: I accept the Probation's findings  
14 on that matter, Your Honor. I usually defer to the Court on  
15 the fine. I am not specifically recommending one.

16 THE COURT: Fair enough. Thank you.

17 As to supervised release, the statute also permits  
18 me to impose supervised release of three years and the  
19 guidelines range is one to three years.

20 Mr. Ohm, does Mr. Douglas object to any of the  
21 conditions of supervised release that Probation has  
22 recommended?

23 MR. OHM: No, Your Honor.

24 THE COURT: And, Mr. Wasserman, does the  
25 Government recommend any additional conditions beyond what

1 Probation has recommended?

2 MR. WASSERMAN: No, Your Honor.

3 THE COURT: Thank you.

4 Counsel, any objections to my guidelines  
5 calculations? Mr. Wasserman?

6 MR. WASSERMAN: No, Your Honor.

7 THE COURT: Mr. Ohm?

8 MR. OHM: No, Your Honor.

9 THE COURT: So that's the relevant guidelines  
10 calculations, and I will now hear from the parties. By  
11 that, I intend to first hear from the Government about what  
12 the Government believes an appropriate sentence is, and then  
13 from you, Mr. Ohm, then from you Ms. Gavito, if you have  
14 anything you would like to add. And then I will give Mr.  
15 Douglas an opportunity to speak to me if he would like.

16 Mr. Wasserman, the Government has argued for a low  
17 end of the guidelines range sentence here. Why do you think  
18 that is an appropriate sentence?

19 MR. WASSERMAN: Your Honor, what I would suggest,  
20 to highlight my sentencing memorandum, obviously the  
21 Defendant has been incarcerated at this point for over a  
22 year. Certainly under probably more trying circumstances  
23 than is typical given the COVID pandemic.

24 THE COURT: Mr. Wasserman, does the Government  
25 have a view about whether, essentially, time presently

1 served at the D.C. Jail under COVID conditions and  
2 restrictions should, essentially, get more than a one-day  
3 for one-day credit when thinking about an appropriate  
4 sentence here?

5 MR. WASSERMAN: I don't adopt that view, Your  
6 Honor. I certainly acknowledge that the circumstances of  
7 the last year have made serving present time more unpleasant  
8 than it otherwise already is. I don't think that there's a  
9 basis to somehow create a formula by which to reduce a  
10 sentence based upon perceived hardships from the COVID  
11 pandemic.

12 I don't know what each individual inmate, what  
13 circumstances they served their sentence under; how it has  
14 impacted them. I understand Mr. Ohm's representations. I  
15 don't know, you know, the specifics of what Mr. Douglas has  
16 undergone. I just think that's kind of a bridge too far. I  
17 do think it's fine for the Court to consider those  
18 circumstances, perhaps, in this situation in determining  
19 where within the guideline range to fall, but not as a basis  
20 of a variance. I don't know if that answers the Court's  
21 question.

22 THE COURT: It does. It does. Thank you.

23 MR. WASSERMAN: So in light of, you know, what  
24 really the parties negotiated as part of the plea, I would  
25 suggest to the Court that a sentence at the low end of the

1 guideline range is a pretty generous recommendation for this  
2 particular Defendant, given his repeated possession of  
3 firearms illegally.

4 I do take issue with the notion that somehow he's  
5 possessed these guns solely for self-defense. I think the  
6 search of his iCloud and cell phone significantly undermine  
7 that notion, particularly where he apparently sought to  
8 purchase an assault rifle with an extended magazine, has  
9 pictures of himself posing with weapons and a video of  
10 himself firing a weapon. And I would add on the fact that  
11 the Defendant was awaiting trial in a narcotics trafficking  
12 case in Superior Court at the time that he committed this  
13 offense. Those are facts that I would suggest undermine the  
14 notion that this is just strictly for self-defense.

15 Notwithstanding that, whether or not that's true,  
16 it's obviously illegal. I mean, I know the homicide rate in  
17 the District of Columbia has been on the increase over the  
18 last several years. The Defendant claims that he's had  
19 close friends who have been the victim of gun violence. So  
20 if anybody should know what the impact of carrying illegal  
21 firearms is and the consequence of that, it's the Defendant.

22 Quite frankly, and sadly, the overwhelming  
23 majority of the victims of gun violence, particularly in the  
24 District of Columbia but even nationwide and certainly in  
25 major metro area, are African Americans and people of color.

1 So the notion that somehow enforcement of or antigun  
2 enforcement that is focused in areas where gun violence is  
3 at its worst, that that is somehow unfair or discriminatory,  
4 quite frankly, is ridiculous in my opinion.

5 So I think the Defendant's prior record is  
6 troubling. It's troubling for the notion that he does not  
7 continue to present a risk to reoffend given, obviously, his  
8 past behavior; the fact that he's been on probation  
9 previously and been revoked. He was obviously on supervised  
10 release in this case. The fact that he lacks sufficient  
11 education or vocational training to have, you know, real  
12 opportunities for employability, notwithstanding again, that  
13 he's had opportunities at least to try to take advantage of  
14 prior periods of probation to get on track.

15 I would suggest that a sentence at the low end of  
16 the guidelines is a generous one, but ultimately sufficient,  
17 I would hope, to convey to the Defendant that he needs to  
18 change his behavior. Otherwise, he will wind up right where  
19 he is or worse, and be the victim of gun violence himself.

20 I know he does face a potential parole hit. I  
21 think that also can factor into a sentence at the low end of  
22 the guideline range, since he may face additional time, even  
23 if it's just waiting to have his parole matter addressed.  
24 Again, I disagree with defense counsel that it's the basis  
25 -- it should be the basis of a variance, particularly in



1 light of Mr. Douglas' record.

2 So unless the Court has additional questions,  
3 that's my recommendation. I also would recommend a  
4 three-year period of supervised release.

5 THE COURT: Thank you, Mr. Wasserman. Mr. Ohm?

6 MR. OHM: Thank you, Your Honor.

7 As the Court knows, we are asking for a sentence  
8 of a year and a day, with a term of one year supervised  
9 release added on to that.

10 I want to start with where the Court asked the  
11 Government about why the low end of the guideline range is  
12 the appropriate place that Mr. Douglas should fall into. I  
13 think it starts with his criminal record. I know that he  
14 does have these offenses. Obviously, he has to have prior  
15 felony offenses or we wouldn't be here in front of Your  
16 Honor. That guideline range encapsulates all sorts of  
17 people with criminal history. Mr. Douglas' criminal record  
18 has presumptary offenses. There is no violent conduct,  
19 which distinguishes him from many other individuals that  
20 come before Your Honor in this case with 922(g) cases. I  
21 think it is very important in assessing an individual's  
22 dangerousness.

23 I take to heart what Mr. Wasserman said. Number  
24 one, I would point out that the drug offense was dismissed  
25 even prior to the plea agreement in this case. So I'm not

1       sure about the evidence that actually supports that charge.

2               In addition to that, Mr. Douglas has lived long  
3       enough, when an individual doesn't have any sort of record,  
4       and frankly, stayed away from the police and had no contact  
5       with the police for a substantial period of time, I think  
6       that tells the Court about -- I don't think the Court can  
7       infer any sort of malicious intent or behavior with the part  
8       of gun possession, which both the law now and society  
9       acknowledges now is something that is a part of life.

10              I do want to --

11              THE COURT: Mr. Ohm, Mr. Wasserman points out,  
12       however, that there is evidence in the record that from the  
13       iCloud and cell phone about your client's interest in guns.  
14       I think it is fair to say that doing more than merely  
15       possessing a gun for self-defense purposes, as you suggest  
16       in your brief, is really the main reason --

17              MR. OHM: Your Honor, I don't think they are  
18       mutually exclusive facts. There are a lot of individuals in  
19       the country who have firearms for self-defense who are  
20       interested in the different types of firearms that exist. I  
21       think there are individuals who have firearms for  
22       self-defense that actually go and shoot those firearms so  
23       that the first time they use a firearm is not in  
24       self-defense -- it's not the first time that they use a  
25       firearm. I don't think that those facts are at all mutually

1 exclusive. I know plenty of individuals who are gun owners  
2 and fire their firearms all of the time and have extremely  
3 significant interest in the different brands and models of  
4 firearms that are out there. It doesn't mean they are using  
5 them for any other purpose other than self-defense or their  
6 interest in firearms. One can't infer and one would not  
7 think that there is any criminal purpose for that  
8 possession.

9 What I think is more important is that the  
10 Government went through Mr. Douglas' phone. The  
11 investigation here for a 922(g) case was significant and  
12 far-reaching compared to other 922(g) cases I've seen. It  
13 is the first one I had a full extraction. They couldn't  
14 find any evidence of other criminal activity, any violent  
15 activity or dangerous activity because there is none in Mr.  
16 Douglas' history or nature. So I think it is an important  
17 fact for the Court to consider.

18 Beyond that, this plea agreement came about at a  
19 time when -- this doesn't really apply to Mr. Douglas,  
20 himself per se, but I haven't appeared before Your Honor in  
21 a sentencing hearing before. I think that it is important  
22 to point out that a Defendant, Defendants generally, both  
23 have a right and it is helpful to the criminal justice  
24 system to have a sense that is somewhat predictable that a  
25 Government's allocution, which obviously isn't a

1 be-all-end-all, and obviously the sentence is ultimately  
2 left to the judge. That the criminal justice system  
3 benefits when there is some sort of a predictability of a  
4 sentence when an individual considers whether to accept a  
5 plea offer. Especially in a time when, I think, both US  
6 Attorney's Office and defense bar is substantially stressed  
7 and under a lot of pressure because of an influx of,  
8 frankly, work that has come into our courthouse in the past  
9 several months that individuals who are provided with a plea  
10 agreement and given the incentive to dispose of the case  
11 before trial, that it is important for Defendants who are at  
12 the D.C. Jail who -- I'm sure Mr. Douglas will have  
13 conversations when he returns to his cell block -- that it  
14 is important for the system, for the Defendants in the  
15 system, the other shareholders to know that when a plea  
16 agreement is offered, that the presumption is that that will  
17 strongly be considered; that those allocutions and those  
18 limits on allocution are strongly considered by the Court,  
19 just as a general matter. So I think that is something that  
20 the Court should also consider.

21 In terms of --

22 THE COURT: Mr. Ohm, and that means what here? I  
23 understand the argument but in your view that means?

24 MR. OHM: Your Honor, that means that if the Court  
25 is on the fence, I think the Court should accept the

1 allocation of the Government and recognize that during the  
2 time when, frankly, individuals are setting trials that may  
3 be within a reasonable amount of time or time under the  
4 Speedy Trial Act or made for a more practical purpose. I  
5 know that is not the case for Mr. Douglas, and he could have  
6 had the trial earlier. But if everybody -- I will say this  
7 in a more plain manner. If Your Honor becomes the judge  
8 that in defense bar experience and in the D.C. Jail resident  
9 experience becomes the judge who does not follow the  
10 Government's recommendation for allocation, that does have  
11 an impact on how cases get -- or how both defense lawyers  
12 and defendants perceive plea agreements and the necessity of  
13 or the wisdom of taking a plea agreement in front of one  
14 particular forum or another.

15 THE COURT: I understand that point but are you  
16 talking about the Government's agreement to allocute to the  
17 low end of the guidelines --

18 MR. OHM: Yes.

19 THE COURT: -- or are you talking about the  
20 parties mistakenly thought the guidelines were going to look  
21 like when they either executed the plea agreement or when we  
22 did the plea before. Because, I mean, I think Mr. Douglas  
23 rightly pointed out there was a question about whether the  
24 serial number had actually been obliterated, and a question  
25 about what his criminal history category was going to be.

1           The Government seems to me is allocuting to the  
2   low end of the guidelines. The guidelines are agreed upon  
3   to be 15 to 21 months. Is it your argument that's the  
4   number that I should not be quick to dispose of, or is there  
5   some other number that you are suggesting I should take  
6   because it was what incented the plea agreement in the first  
7   place?

8           MR. OHM: Your Honor, what I am suggesting is that  
9   the defense's understanding is that the Government's  
10   allocation cap is at 15 months at this point. And for the  
11   Court to exceed that, that that would simply be perceived as  
12   the Court not following the Government's allocation. I  
13   don't mean to suggest much more than that, and the  
14   importance of that predictability in decisions that  
15   individuals like Mr. Douglas need to make.

16          THE COURT: Fair enough. As to the argument about  
17   the time Mr. Douglas has spent in D.C. Jail post-COVID  
18   restrictions, it seems to me -- though I will probably ask  
19   you, Ms. Gavito for your view of this -- it seems to me that  
20   there is an agreement, certainly between the parties that  
21   time spent in D.C. Jail over the last year has been harder,  
22   maybe even considerably harder than it would have been  
23   pre-COVID -- I think that's actually pretty obvious -- and I  
24   think probably also harder than it would have been at a BOP  
25   facility pre-COVID, and maybe even harder than it would have

1       been at a BOP facility post-COVID. So one question is  
2       whether that's the case, if you know?

3               In other words, if Mr. Douglas had his sentencing  
4       a year ago and went to one of the BOP facilities in the  
5       post-COVID world, would the restrictions in a BOP -- the  
6       most likely BOP facilities still have been less restrictive  
7       than at the D.C. jail? I'm interested in your view on that  
8       specific situation.

9               Again, since there seems to be agreement that  
10      these last 12 months have been harder than they would have  
11      been -- I don't think there is any doubt about that --  
12      harder at the D.C. Jail, how much I should credit that?

13              PROBATION: Was that for me, Your Honor?

14              THE COURT: It was for Mr. Ohm in the first  
15      instance, and I have a few questions for you, Ms. Gavito.  
16      So why don't we go to Mr. Ohm?

17              PROBATION: Yes, Judge.

18              MR. OHM: In short, yes, I think that is correct.  
19      The information that came out recently is that the D.C. Jail  
20      is the only correctional facility I think in the country,  
21      that has imposed 23-and-1 restrictions throughout the  
22      pandemic. It would have been more harsher time at the D.C.  
23      Jail than at the BOP, either post- or pre-COVID.

24              I think in modern history, it's just not clear to  
25      me how long it's been since we've actually had prisons

1 impose this kind of -- I am not imputing any motive on the  
2 part of the Department of Corrections -- mass solitary  
3 confinement, as the Court knows is the main form of  
4 punishment that the correctional facilities have been using  
5 for a while, and there are recommendations that say it  
6 should never be more than three days at a time, and  
7 obviously everybody over there has been doing it for over a  
8 year now. And Mr. Douglas did it for his entire time there.

9 I don't think that that could be understated.  
10 People talk to themselves. People -- I've gotten over the  
11 course of the year I've gotten phone calls at 1 or 2 in the  
12 morning. I will wake up and see missed calls, six or seven  
13 missed calls because that's the only time an individual has  
14 recreational time and they don't have anybody to talk to.

15 Sort of the confluence of all of these factors is  
16 something, I think -- I mean, jail is difficult enough as it  
17 is, and obviously it is supposed to be, but the combination  
18 of those factors and restrictions that the DOC put in place  
19 to keep Mr. Douglas safe. Obviously, he didn't get COVID;  
20 so that's an important thing. We are not questioning the  
21 decisions. This isn't the forum for that, but it is  
22 indisputable that the time he did was unusually and  
23 incredibly harsh.

24 I think it makes sense, Your Honor, especially  
25 when combining that with our argument about the Parole



1 Commission time sort of the dead time he will lose in the  
2 next three months is another place where it comes into play  
3 because he has more time that he's going to have to do under  
4 these circumstances, which I read an email today that said  
5 June 1st they are going to try some things but the next  
6 month he will continue to live under these circumstances;  
7 that's time that's not going to be credited at all, because  
8 if the Court does follow the Government's recommendation,  
9 then he will essentially be eligible for release. It will  
10 take two weeks for the BOP to determine that time. And then  
11 once it's credited, and it's determined that he would have  
12 been done with his time now, the time between the end of his  
13 sentence is calculated, which will be two weeks from now at  
14 the earliest, to the time the parole warrant is issued.  
15 Then he has to be brought before the Parole Commission for a  
16 probable cause hearing and then there has to be a final  
17 determination.

18 All of those things, Your Honor, it's time that he  
19 is going to have to spend. If the Court sentences him to  
20 the 15 months, rather than the year and a day that we've  
21 asked for, then that time will not be credited to anything;  
22 so that's why we came up with a year and a day.

23 I think I agree with Mr. Wasserman. I don't think  
24 that there is a broad formula that you can apply to  
25 everybody under every circumstance. It's not what we are

1 advocating for. In this situation where the difference  
2 between 15 months and a year and a day would only really  
3 cover time that he would not actually be credited for, given  
4 the fact that he -- we are still in the pandemic. Given the  
5 fact that the D.C. Jail restrictions are still in place and  
6 the harm is obvious to anybody. I think given all of those  
7 things, the Court can consider and should consider when  
8 fashioning its sentence, the hardships that Mr. Douglas is  
9 going to face, both for his violation of the law in this  
10 case and for the supervised release violation that is  
11 coming.

12 I think it's also important to note that Mr.  
13 Douglas, we see him at this point as facts in a case. Mr.  
14 Douglas is a young man. He has a beautiful son, a dutiful  
15 father. He has suffered and been punished in the most human  
16 way that he hasn't and wasn't able to be there for the birth  
17 of his child. He has not been able to interact with his  
18 daughter and, frankly, Mr. Douglas for all -- despite the  
19 circumstances from which he comes before the Court, Mr.  
20 Douglas is a proud and responsible father, who has always  
21 taken care of his family; and that that has always been a  
22 priority in his life.

23 The fact that he has not been able to help his --  
24 the mother of his baby through the most difficult times of  
25 the infant's life is something that he takes to heart and he

1 recognizes is something that he has to stop.

2 His responsibility -- not necessarily the  
3 punishment but the responsibility that he's had time to  
4 consider to think about over the past year while he's been  
5 sitting in his cell for 23 hours a day, that is what has  
6 motivated him and will continue to motivate him to be a  
7 different person, to be somebody who will be productive, and  
8 to avoid this sort of situation so that he can be there for  
9 his children and also continue to be there for his parents,  
10 who are getting a little bit older now.

11 So, Your Honor, all of those reasons are why I ask  
12 the Court and recommend a sentence of one year and one day.  
13 And then on top of that I ask the Court for -- oh, one other  
14 thing I didn't mention is the Parole Commission warrant also  
15 effects his ability to go to the halfway house at the end of  
16 the sentence. So I think that that is something that the  
17 Court can consider. It also prolongs the incarceration  
18 aspect of the sentence under the D.C. Code Parole Commission  
19 regulations.

20 For all of those reasons, Your Honor, under the  
21 Booker factors I ask the Court to sentence Mr. Douglas to  
22 one year and one day.

23 THE COURT: Thank you, Mr. Ohm.

24 Mr. Douglas, I will give you an opportunity to  
25 speak in one minute, if you would like, but I want to turn

1 to Ms. Gavito, to just -- any comment she might have on my  
2 questions around the post-COVID restrictions at the D.C.  
3 Jail, vis-a-vis, either current BOP restrictions or  
4 otherwise.

5 PROBATION: No, Your Honor. With regards to the  
6 restrictions, I know that the facilities have taken more  
7 precautions because it has been, even for Probation  
8 Officers, it has been a bit more taxing to schedule  
9 interviews and that's for the safety of everybody at the  
10 facilities, including Mr. Douglas and everybody that  
11 interacts with him. I couldn't give any more information or  
12 comment anymore about the restrictions. I would need to be  
13 better informed to advise the Court any further.

14 I do want to clarify that Mr. Douglas has been in  
15 custody for approximately 12 months and 12 days. Just in  
16 case Your Honor is inclined to Mr. Ohm's sentence  
17 recommendation of 12 months and a day. In that case the  
18 Court would probably need to vary upwards, to credit the 12  
19 months and 12 days that Mr. Douglas has been in custody.

20 Finally, Your Honor, the only other thing that I  
21 would seek for clarification, is Your Honor going to request  
22 or order that the pre-sentence report be amended or modified  
23 to include the deletion of the minus four for the specific  
24 offense characteristics?

25 THE COURT: That doesn't seem to be necessary.

1 I've made findings on the record about that. Certainly the  
2 pre-sentence report is Probation's view of things, and I  
3 have a different view based on the record, as it exists. I  
4 think it is crystal clear unless you, I suppose, Mr. Ohm or  
5 Mr. Wasserman, you think there should be an amendment to the  
6 pre-sentence report. But I think the record is very clear  
7 right now.

8 PROBATION: Thank you, Judge.

9 MR. OHM: Your Honor --

10 MR. WASSERMAN: Go ahead, Mr. Ohm.

11 MR. OHM: I think I would request an amendment  
12 just because I know these PSRs follow individuals throughout  
13 their lives, and I think it would be helpful to have --  
14 nothing long or lengthy but something reflecting the Court's  
15 decision.

16 THE COURT: That's fair. Ms. Gavito, could you do  
17 a short addendum or amendment that reflects my determination  
18 that that enhancement is not appropriate here?

19 PROBATION: Yes, Your Honor, we can prepare  
20 something.

21 THE COURT: Thank you, Ms. Gavito.

22 Mr. Douglas, I am happy to hear from you, if you  
23 would like. You are not required to speak, but if you would  
24 like to address the Court about any and all topics that we  
25 discussed today or any others that you would like me to hear

1 about, please feel free to do so.

2 THE DEFENDANT: Your Honor, I just want to say  
3 that this has really been a rough situation and rough  
4 experience being in lockdown for 23 hours and sometimes more  
5 and in jail.

6 At the same time, I can really say I honestly  
7 appreciate the whole situation because it's given me time to  
8 rethink a lot of stuff and rethink a lot of things that I've  
9 done in my life and my thought process. It's given me,  
10 like, a new sense of looking at my life and doing it for my  
11 children and really wanting to be there and not putting  
12 myself or my children or my family through this experience  
13 again. I can honestly say I appreciate it, even though it  
14 was really rough and still is really rough, I can say I  
15 appreciate the whole situation.

16 THE COURT: Thank you, Mr. Douglas.

17 Mr. Ohm, anyone else since I think family members  
18 are on the public line? Anyone that will be addressing the  
19 Court as far as sentencing?

20 MR. OHM: That's correct, Your Honor.

21 THE COURT: Thank you, Counsel, Ms. Gavito and Mr.  
22 Douglas. Having heard from counsel and Mr. Douglas, I will  
23 now indicate the sentence to be imposed. Counsel will have  
24 an opportunity to make any file legal objections before we  
25 conclude today.

1 Obviously under Section 3553(a) I have to consider  
2 a series of individual factors. As to the nature and  
3 seriousness of the offense, Mr. Douglas is charged with  
4 unlawfully possessing a firearm and ammunition. He is 30  
5 years old and this is his third felony firearms conviction.

6 At the time of the offense, Mr. Douglas was  
7 non-compliant with his supervised release conditions from  
8 his 2013 firearms conviction, and he was also a fugitive  
9 from justice after failing to appear in Superior Court for a  
10 then pending felony drug trafficking offense.

11 As to the history and characteristics of Mr.  
12 Douglas, he is, as I mentioned, a 30-year-old. He is a D.C.  
13 resident and has been all his life. According to the PSR he  
14 had a structured childhood, was raised by two working  
15 parents who encouraged education, but he strayed from the  
16 straight and narrow path. Before he was a teenager, he  
17 experimented with drugs and alcohol and quickly ran into  
18 legal trouble. As a juvenile he was charged with two  
19 criminal offenses, one which involved the destruction of  
20 property, and then dropped out of high school.

21 Unfortunately, at the age of 18 he was convicted  
22 of his first firearms offense, and four years later he was  
23 found in unlawful possession of a firearm. As Mr. Ohm  
24 noted, and as I have certainly taken note of, Mr. Douglas is  
25 the father of two children, a three-year-old son and a very

1 young daughter.

2 As to the third factor, protecting the public,  
3 respect for the law and deterrence. When looking to  
4 deterrence as it relates to the Mr. Douglas and other  
5 criminal defendants, the Court has a strong interest in  
6 deterring felons from illegally possessing firearms. It  
7 does not appear that the sentence is administered as a  
8 result of his previous firearms convictions, adequately  
9 deterred Mr. Douglas from illegally possessing a firearm,  
10 and his previous failures to appear at court hearings and to  
11 comply with court-imposed conditions of supervised release,  
12 demonstrate serious lack of disrespect for the law.

13 As to the need for educational or job training or  
14 treatment, the PSR notes that Mr. Douglas would benefit from  
15 educational and vocational training.

16 Mr. Douglas completed the eleventh grade and was  
17 on track to graduate from Spingarn High School, but based on  
18 what he described as a feeling of lack of security and  
19 mental anguish, he discontinued his education. Shortly  
20 after dropping out, he attempted to obtain his GED through  
21 the Pittsburgh Job Corps Center in Pittsburgh, Pennsylvania,  
22 but failed to complete the program. As to employment, he  
23 has been sporadically employed as a landscaper and laborer  
24 for a local moving and hauling service, but other than these  
25 occasional odd jobs, he has not maintained steady



1 employment.

2 According to his mother, Mr. Douglas is interested  
3 in continuing his education and receiving vocational  
4 training as an electrician, which is encouraging. Mr.  
5 Douglas' parents indicated to the Probation Officer that  
6 Mrs. Douglas and Mr. Douglas' father would be willing to pay  
7 for the vocational training.

8 As to substance abuse, the PSR also indicates that  
9 Mr. Douglas would benefit from substance abuse testing and  
10 treatment. He began using drugs and alcohol when he was 12.  
11 He said that he would drink alcohol on the weekends and  
12 occasionally drink to the point of losing consciousness, but  
13 he reported to Probation that he has not consumed alcohol  
14 since 2012, which is great. Mr. Douglas began smoking  
15 marijuana at 12 and continued to use the substance regularly  
16 until the day of his arrest. Mr. Douglas also said he  
17 became addicted to prescription pain killers in 2014. He  
18 admitted he continued to use the prescription pain killers  
19 at least recreationally until 2019.

20 As for his mental health, although Mr. Douglas  
21 reported no family history of mental health issues, and has  
22 never sought mental health treatment, he did tell Probation  
23 that his upbringing was filled with tragic events, including  
24 gun violence that has led to trauma. Obviously, witnessing  
25 your friends or other people you know be killed by gun

1 violence is obviously traumatic. Mr. Douglas now believes  
2 he may now benefit from counseling.

3 So based on my consideration of the sentencing  
4 guidelines, which we have already discussed, and the 3553(a)  
5 factors, as well as the discussion here today, I have the  
6 following views, which is, first, I believe a term of  
7 incarceration of approximately 18 months would have been --  
8 in other words, a mid-guideline range sentence would have  
9 been appropriate given Mr. Douglas' criminal history,  
10 background, the nature of the offense, and the like here.  
11 But for two reasons, principally because of the nature of  
12 the time he has served to date in D.C. Jail, the 23-hour  
13 lockdown, the lack of vocational and other opportunities  
14 and, frankly, the fact that as everyone seems to agree, the  
15 12-plus months that Mr. Douglas has spent in the D.C. Jail  
16 have been harder than they would have been before COVID-19  
17 and probably harder than they would have been even during  
18 COVID-19 at a BOP facility, that I think it is appropriate  
19 to recognize that fact; and I therefore believe that a low  
20 end of the guidelines term of incarceration is appropriate.  
21 And it is my judgment, therefore, that a sentence of 15  
22 months term of imprisonment is appropriate here, which is  
23 obviously the lowest end of the guidelines.

24 It is therefore my judgment that you, Mr. Douglas,  
25 are committed to the custody of the Bureau of Prisons for a

1 term of imprisonment of 15 months.

2 As to supervised release, I believe a term of  
3 three years of supervised release is important, both because  
4 of the opportunities that can be provided to you as part of  
5 supervised release and, frankly, because historically you  
6 have not done a very good job of complying with terms of  
7 supervised release, and I think it is important to ensure  
8 that there is some contact between you and the system so  
9 that we can try to not have you commit another offense.

10 In my view, the sentence of 15 months of  
11 incarceration, plus 3 years of supervised release, is  
12 sufficient but not greater than necessary to reflect the  
13 seriousness of the offense, promote respect for the law, to  
14 provide justice punishment, to protect the public from  
15 future crimes by Mr. Douglas.

16 As to supervised release, I'm basically going to  
17 adopt all of the recommendations from Probation but will go  
18 through them quickly at least for the record. You are  
19 required to abide by several mandatory conditions. You must  
20 not commit another federal, state or local crime. You must  
21 not unlawfully possess a controlled substance, refrain from  
22 unlawful use of controlled substance. You must submit to  
23 one drug test within 15 days of placement on supervision,  
24 and at least two periodic drug tests thereafter as  
25 determined by the Court, and you must cooperate in the

1 collection of DNA as directed by the Probation Officer, if  
2 necessary, but I think that that has already happened in the  
3 past.

4 As I noted, I am also following the  
5 recommendations from Probation as to the following special  
6 conditions: Substance abuse, you must participate in an  
7 inpatient and/or outpatient substance abuse program. You  
8 must submit to substance abuse testing to determine if you  
9 have used a prohibitive substance. Mental health treatment,  
10 you must participate in a mental health treatment and follow  
11 the rules and regulations of that program.

12 Vocational services, I think this is very  
13 important. I note your parents' commitment to helping you  
14 find a career, and I'm very hopeful that their efforts  
15 together, perhaps with a vocational services program, will  
16 be effective. You must participate in such a program, a  
17 vocational services program and follow the rules and  
18 regulations of it.

19 Finally, educational services program, it seems to  
20 me that you are quite close to getting your high school  
21 degree, and I think that would be a good thing to try to  
22 achieve; and so therefore, I am ordering you to participate  
23 in an educational services program, which could include a  
24 high school equivalency and other classes designed to  
25 improve your proficiency in skills that people develop in

1 high school.

2 As to the fine, I find you are unable to pay a  
3 fine and waive the imposition of one. As to forfeiture,  
4 pursuant to Rule 32.2(a) of the Federal Rules of Criminal  
5 Procedure, Mr. Douglas is ordered to forfeit the Sig Sauer  
6 P320 semiautomatic pistol, magazine and 13 rounds of .40  
7 caliber ammunition.

8 A few other general notices. You must pay a  
9 special assessment of \$100, in accordance with 18 US Code  
10 Section 3013, that amount is payable to the Clerk of Court.  
11 If you change address, you must notify the Clerk of the  
12 change, until such time as that \$100 is paid in full.

13 As to the pre-sentence investigation report, I  
14 think we have already discussed an amendment to it to  
15 reflect my determination that the four-level enhancement is  
16 not warranted here. That will happen and then Probation is  
17 permitted to release that report to other appropriate  
18 agencies in order to execute the sentence.

19 I believe we discussed this during the plea  
20 hearing, but there are some appellate rights I believe have  
21 been preserved. If you do choose to appeal, Mr. Douglas,  
22 you must file any appeal within 14 days after entry of the  
23 judgment. If you are unable to afford the cost of the  
24 appeal, you may request permission from the Court to file an  
25 appeal without cost to you.

1           Also, as defined in Federal Statute 28 US Code  
2           section 2255, you also have the right to challenge the  
3           conviction entered or sentence imposed if new and currently  
4           unavailable information becomes available to you or on a  
5           claim that you received ineffective assistance of counsel in  
6           entering a plea of guilty to the offense or conviction in  
7           connection with sentencing.

8           So with all of that, are there any questions about  
9           the sentence I've imposed or any objections to state for the  
10          record? Mr. Ohm, why don't we start with you.

11          MR. OHM: Just to clarify, Your Honor. So the  
12          Court has essentially taken the language from the Probation  
13          Officer's recommendation. Everything would be essentially  
14          at the discretion of the Probation Officer. Right?

15          THE COURT: Yes.

16          MR. OHM: Okay. Thank you.

17          Your Honor, other than what we've argued both here  
18          and in our sentencing memorandum, we don't have any  
19          additional objections.

20          THE COURT: Thank you. Mr. Wasserman?

21          MR. WASSERMAN: No objections from the Government,  
22          Your Honor.

23          THE COURT: Ms. Gavito, anything you would like to  
24          add?

25          PROBATION: Nothing further, Your Honor. Thank

1       you.

2               THE COURT: Mr. Ohm, are there any recommendations  
3       you would like me to make to the Bureau of Prisons?

4               MR. OHM: Your Honor, my calculation, based on the  
5       Court's sentence, is that, no, that won't be necessary.

6               THE COURT: Thank you. Anything else we should  
7       discuss today, Counsel?

8               MR. WASSERMAN: Nothing from the Government, Your  
9       Honor.

10              MR. OHM: Nothing on matter of law, Your Honor,  
11       but I would ask if Ms. Lesley could indulge us with the  
12       breakout room, I would very much appreciate it.

13              THE COURT: Yes. Ms. Lesley, before we close the  
14       hearing, could you put Mr. Ohm and Mr. Douglas in a breakout  
15       room we will wait for them to return.

16              COURTROOM DEPUTY: Yes, Your Honor.

17              MR. WASSERMAN: Are we excused, Your Honor?

18              THE COURT: Oh, I apologize. I thought you wanted  
19       to consult with him before we close the hearing. You'd like  
20       to talk to him after the hearing is over.

21              MR. OHM: Correct. Sorry about that.

22              THE COURT: So we are concluded for today. Thank  
23       you, Mr. Wasserman. And Ms. Lesley, if you could put Mr.  
24       Ohm and Mr. Douglas in a breakout room after this hearing is  
25       over, I would appreciate it. Thank you all.

1 MR. WASSERMAN: Thank you, Judge. Have a good  
2 day.

3 PROBATION: Thank you, Your Honor.

4 MR. OHM: Thank you, Ms. Lesley.

5 COURTROOM DEPUTY: You're welcome.

6 (Proceedings concluded at 10:22 a.m.)  
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C E R T I F I C A T E

I, **Lorraine T. Herman, Official Court Reporter**, certify that the foregoing is a true and correct transcript of the record of proceedings in the above-entitled matter.

**Please Note:** This hearing occurred during the COVID-19 pandemic and is therefore subject to the technological limitations of court reporting remotely.

July 15, 2021  
DATE

/s/  
Lorraine T. Herman